

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NAVITAS KY NG, LLC FOR)
APPROVAL TO BOOK AS A REGULATORY ASSET) CASE NO.
ITS COST ASSOCIATED WITH ITS DISTRIBUTION) 2012-00089
INTEGRITY MANAGEMENT PROGRAM)

ORDER

On March 9, 2012, Navitas KY NG, LLC (“Navitas”) filed an application for approval to establish a regulatory asset in the amount of \$7,875 for the costs associated with the preparation of the Distribution Integrity Management Program (“DIMP plan”)¹ for its natural gas distribution system in Albany, Kentucky (“Albany system”), by Tri-Star Energy Consultants (“Tri-Star”) and to amortize the amount over five years.² The application also requested that the Commission confirm that a DIMP plan is mandatory and necessary, and to determine that hiring a consultant is a necessary and prudent investment. There are no intervenors in this proceeding.

DISCUSSION

In its application, Navitas states that it contracted with Tri-Star to prepare the DIMP plans for all of its systems,³ and, due to its small size, it does not have a

¹ DIMP plans are required as a result of the Pipeline Inspection, Protection Enforcement and Safety Act of 2006. The Pipeline and Hazardous Materials Safety Administration established rules in 2009 specifying how gas distribution companies must identify, assess, prioritize, evaluate, and repair and validate the integrity of distribution mains. The rules mandate minimum requirements for a DIMP plan that Navitas is required to follow.

² In response to Commission Staff’s Second Request for Information, Item 4.b, Navitas indicated the amortization period would be for 63 months.

³ Navitas also operates natural gas distribution systems in Tennessee and Oklahoma.

regulatory staff and its various state regulatory attorneys were not well-versed on the DIMP requirements. By negotiating a contract for all of its natural gas distribution systems, Navitas was able to obtain favorable contract terms and pricing. Navitas attempted to prepare a DIMP plan in-house but abandoned the effort believing it did not adequately understand the complexities of interpreting applicable federal regulations.

Navitas's application indicates the costs to be recorded as a regulatory asset are for its DIMP plan, but the contract with Tri-Star also includes preparation of an Operations and Maintenance Manual, an Emergency Manual, and a Public Awareness Plan, all of which are required by federal regulations. Pursuant to federal pipeline safety laws, the Commission requires that natural gas distribution companies adhere to the existing federal regulations to have and maintain all of the above documentation.⁴

The estimated cost of preparing all of the above compliance documentation for the Albany system is \$7,875, based on its current customer level of 125. Navitas proposes to record the total cost in a regulatory asset account and establish a liability for the contract amount. Navitas explains that it plans to amortize the cost of \$7,875 over 63 months, which will reduce its margins by approximately \$1,500 each year. On a monthly basis, Navitas will record the amortization of the regulatory asset and payment to Tri-Star based on a charge by Tri-Star of \$1.00 per month per customer or a total amount of \$125 per month based on Navitas's current customer level of 125.

⁴ The applicable Code of Federal Regulations governing the requirement for the above documentation is 49 CFR Part 192. The Commission was authorized by the Kentucky General Assembly to enforce federal pipeline safety standards pursuant to the Natural Gas Pipeline Safety Act of 1968 which established procedures under which states can assume the responsibility for regulation and enforcement.

ANALYSIS

A regulatory asset is created when a rate-regulated entity is authorized by its regulator to capitalize an expenditure that, under traditional accounting rules, would be recorded as a current expense. The reclassification of an expense as a capital item allows the regulated entity the opportunity to request recovery of the cost in future rates. The authority for establishing regulatory assets arises under the Commission's plenary authority to regulate utilities under KRS 278.040 and its authority to establish a system of accounts for utilities under KRS 278.220. Historically, the Commission has exercised its discretion to approve the creation of a regulatory asset where a utility has incurred one of the following: (1) an extraordinary, nonrecurring expense which could not have reasonably been anticipated or included in the utility's planning; (2) an expense resulting from a statutory or administrative directive; (3) an expense in relation to an industry sponsored initiative; or (4) an extraordinary or nonrecurring expense that over time will result in savings that fully offsets the cost.⁵

In this instance, the second criteria above would generally apply to a request for a regulatory asset such as that made by Navitas. Typically, requests to establish a regulatory asset arise out of an extraordinary event causing the utility to incur significant costs that had not been planned or foreseen. Navitas has not yet incurred any costs related to the contract under which Tri-Star will prepare the DIMP plan and other compliance documentation for the Albany system. Under the contract terms, Navitas will incur a cost of \$125 per month for 63 months resulting in a total cost of \$7,875. Thus, the monthly expense it will incur per the contract is the equivalent of the amount it

⁵ Case No. 2008-00436, Application of East Kentucky Power Cooperative, Inc. for an Order Approving Accounting Practices to Establish a Regulatory Asset Related to Certain Replacement Power Costs Resulting from Generation Forced Outages (Ky. PSC Dec. 23, 2008).

will charge as a monthly expense under the amortization schedule for its proposed regulatory asset.

Navitas states that it would place a significant strain on its resources if it were to incur the full cost to prepare the compliance documentation at one time. For a utility the size of Navitas's Albany system, incurring a one-time expense of \$7,875 could arguably have a significant impact on its financial results for the year. However, at a monthly contract cost of \$125, the financial impact of \$1,500 annually is much less significant and does not rise to the level of an extraordinary expense. Since the financial impact will be spread over the term of the contract and the cost has not yet been incurred, recording a regulatory asset is not warranted.

Federal regulations require the operator of a natural gas distribution system to develop and implement a DIMP plan. Likewise, the other pipeline safety plans that Tri-Star is to prepare are required of natural gas distribution utilities. The Commission requires that natural gas distribution companies adhere to the existing federal regulations to have and maintain all of the above safety documentation pursuant to federal pipeline safety laws.

The operator has several options when it comes to deciding to develop and prepare its compliance documentation, including using the lower cost SHRIMP (Simple, Handy, Risk-based Integrity Management Plan) program available through the American Public Gas Association for a DIMP plan, preparing the plans in-house, or hiring a contractor such as Tri-Star. It is up to the operator, not the Commission, to determine if hiring an outside consultant/contractor is necessary based on the operator's financial condition and whether an outside consultant/contractor has the expertise to provide a finished product that meets the regulatory requirements. The

request to find that the hiring of Tri-Star is a “necessary and prudent investment” is not warranted and should be denied.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that:

1. Navitas’s request for authority to record the cost of preparing various compliance documentation as a regulatory asset should be denied.

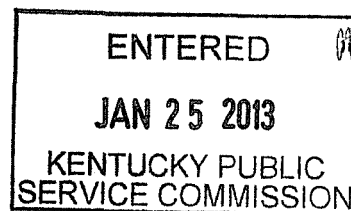
2. Navitas’s request that the Commission find that the hiring of Tri-Star is a prudent and necessary investment should be denied.

IT IS THEREFORE ORDERED that:

1. Navitas’s request to establish a regulatory asset account to record the cost of preparing compliance documentation is denied.

2. Navitas’s request that the Commission find that the hiring of Tri-Star is a prudent and necessary investment is denied.

By the Commission



ATTEST:

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