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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

NAVITAS KY NG, LLC's RESPONSE TO B&W'S SEPTEMBER 16, 2019 <u>PUBLIC COMMENT ADDRESSING FERC'S SEPTEMBER 4, 2019 ORDER</u>

Pursuant to this Commission's Order entered September 23, 2019, Navitas KY NG, LLC ("Navitas") hereby submits its Response to B&W Pipeline, LLC's ("B&W") September 16, 2019 Public Comment addressing the jurisdictional issues raised in Federal Energy Regulatory Commission's ("FERC") September 4, 2019 Order regarding the applicability of B&W's gas transportation rates to Navitas for calculating its GCR.

I. B&W'S PROPOSED IMPLEMENTATION OF ITS SETTLEMENT WITH FERC CONTRAVENES THE TENNESSEE REGULATORY AUTHORITY'S ORDER ENTERED ON MARCH 10, 2016 EXPLICITLY ORDERING B&W (DOCKET NO. 15-00042) TO SEEK FERC APPROVAL OF A $0.30813 PER MCF TARIFF IN THE COMPANY'S APPLICATION FOR A BLANKET CERTIFICATE PURSUANT TO 18 C. F. R. § 284.224

In contravention of the Tennessee Regulatory Authority's ("TRA") Order entered on March 10, 2016 explicitly ordering B&W (Docket NO. 15-00042) to seek FERC approval of a $0.30813 per MCF tariff in the company's application for a blanket certificate pursuant to 18 C. F. R. §284.224, B&W sought and obtained from FERC a rate to transport gas from the Spectra East Tennessee Pipeline to the Navitas KY NG system at $2.7172 per MCF. The TRA had determined in its Order that B&W Pipeline should generate total annual revenues of approximately $280,834. The total annual revenue being sought by B&W from the Navitas KY NG, LLC customers under the FERC order greatly exceeds this figure. Navitas, in response, announced that the FERC Order would result in a shut-down of its Byrdstown-Fentress, Tennessee pipeline and discontinuance of Tennessee service. <u>See</u> Letter from Navitas to Tennessee Public Utility Commission dated September 9, 2019 affixed hereto as **<u>Exhibit A</u>**.

In response to B&W's actions and Navitas' announcement, the Tennessee Public Utility Commission (TPUC) initiated an investigation into the notice of probable shut down and discontinuance of Tennessee service (Docket No. 10-00084). The Tennessee Consumer Advocate submitted the accompanying emergency Petition to Intervene in the proceeding before TPUC requesting sanctions against B&W for seeking a transportation rate not authorized by the TRA. Petition to Intervene is affixed hereto as **Exhbit B**. According to the Tennessee Consumer Advocate, "On March 10, 2016[sic], TPUC entered a Final Order Setting Rates. TPUC ruled:

> Therefore, the panel concludes that as B&W is not a Hinshaw pipeline, the Company must address its status with FERC, specifically by applying for an Order No. certificate exemption pursuant to 18 C.F.R. § 284.224.22. A FERC Order 63 certificate would allow B&W to acquire Hinshaw-like status with FERC and thus authorize the TRA to set rates for all of the gas delivered by B&W to Navitas, including for those volumes consumed by customers in Kentucky. **As part of the application for a blanket certificate, B&W shall utilize this Order and the rate established herein for FERC for review."** (Emphasis added). Consumer Advocate's Petition to Intervene, at 4, para. 10.

Accordingly, the Commission should approve the Tennessee rate or stay its decision in this matter pending TPUC's ruling on its Investigation in Docket No. 19-00084.

II. THE FERC-APRROVED GAS TRANSPORTATION RATE IS NOT APPLICABLE TO NAVITAS FOR CALCULATING ITS GCR

The September 4, 2019 FERC Order provides no clarification regarding the applicability of the FERC-approved transportation rate sought by B&W in violation of the TRA Order and only states that "Navitas is subject to B&W's SOC to the extent it wishes to ship natural gas in interstate commerce via B&W's facilities. Thus, when Navitas ships its gas from the Spectra East Tennessee Pipeline through the B&W pipeline, it is subject to the FERC rate. However, when B&W's affiliated exploration and production operations ship gas through the B&W pipeline and Navitas takes custody of that gas at its Navitas_KY NG city gate, Navitas is not subject to the FERC tariff as Navitas is not the owner nor the shipper of the gas when it enters the B&W Pipeline from B&W's affiliated wells. Rather, B&W's affiliate holds custody to that gas and is the shipper and therefore is responsible for any shipping charges. No clarification is provided by FERC regarding the source of the gas that is shipped and where Navitas takes custody of the gas.

Accordingly, the Commission should not impose a transportation rate on Kentucky customers based on FERC's dismissal of Navitas request to reopen the proceeding and limited clarification provided in its order.

III. IMPLEMENTATION OF THE FERC ORDER REQUIRES B&W, A NON-REGISTERED PUBLIC UTILITY IN KENTUCKY, TO PETITION THE COMMISSION FOR APPROVAL OF ANY ARREARAGE AMOUNT PASSED ON TO KENTUCKY CUSTOMERS

In addition to the problem of having to pass along B&W's FERC-approved transportation rate to Navitas' Kentucky customers, the FERC Order also imposes a retroactive arrearage amount on Navitas for the time period between July 2017 and January 2019. The process for pursuing any potential arrearage will involve B&W filing a petition with the Commission, at which time Navitas will request to intervene.

The amount of any potential arrearage is difficult to determine. Kentucky customers have already paid a substantial amount perhaps more than enough to cover the tariff on the gas shipped by Navitas from the Spectra East Tennessee Pipeline. Moreover, B&W's affiliates will need to open their books to disclose all their gas flooding operations. The disclosures will reveal two important implications related to a B&W affiliate taking Navitas' gas from the Spectra East Tennessee pipeline and replacing it with gas from B&W's production operations. First, as discussed above, since Navitas' gas did not make the transit through the B&W Pipeline, no tariff is due. Second, as B&W took Navitas' gas and replaced it with gas from its own production operations, that makes B&W a customer of Navitas. Thus, Navitas will need to bill B&W for delivery of that gas in accordance with Navitas' Tennessee tariff.

Furthermore, as B&W had the ability to begin charging a lesser tariff (the tariff outlined by the TRA in the March 2016 Order) in July of 2017, thereby reducing the impact of any potential arrearage amount on customers, such an amount should not be authorized by the Commission in keeping with its mission "to foster the provision of safe and reliable service at a reasonable price to the customers of jurisdictional utilities while providing for the financial stability of those utilities by setting fair and just rates."

Finally, to reiterate the point of why retroactive rate-making is not allowed, the Kentucky customer responsible for as much as 90% or more of the Kentucky flow – Keystone Foods - no longer exists in Clinton County, Kentucky, as they sold the business to a new owner)Tyson Foods – last year. Thus, an industrial customer who did not exist at the time of the gas usage dating back to July 2017 would be asked to pay for it today.[1]

WHEREFORE, for the reasons set forth in this Response, Navitas respectfully requests that this Commission stay its decision in this matter pending the Tennessee Public Utility Commission's ruling in Docket #19-00084 regarding the applicability of the Tennessee rate; or in the alternative, apply the Tennessee rates until an Application has been filed and approved by the Commission addressing the issues raised in this Response, including, but not limited to, the appropriate transportation rate, the potential arrearage amount, if any, owed, and reaffirmation of the current Keystone Contract.

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[1] On several occasions since the B&W Pipeline 2015 rate case hearings, B&W Pipeline has requested that Navitas further discount its tariff to the chicken processing facility. The current discount approved by the Kentucky PSC yields a tariff of $1.81 per MCF. Thus, B&W is seeking to earn 50% more than Navitas. Moreover, given the loan obligations associated with the pipeline construction project to transport gas to the plant, any further discount would put the utility and, therefore, its customers at financial risk. Navitas desires that the Commission will reaffirm the previously approved Keystone Contract and remind the parties that any change in that contract will have to be approved in a formal and thorough rate-making process.

Dated this 1st day of October, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the ~~30th~~ 1st day of ~~September~~ October, 2019, a true and correct copy of the foregoing instrument was deposited in the United States Mail, with postage prepaid, and addressed to the following:

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