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August 19, 2019

RECEIVED

Gwen R. Pinson, Esq., Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

AUG 20 2019

PUBLIC SERVICE
COMMISSION

Re: Case No. 2019-00241
Purchased Gas Adjustment of Navitas KY NG, LLC

Dear Ms. Pinson:

On behalf of B&W Pipeline, LLC ("B&W Pipeline" or "B&W"), I am filing this response to the letter dated August 8, 2019 from Ms. Vanessa Novak, counsel for Navitas Utility Corporation, in the above-captioned docket. Included with the letter is a request from Navitas KY NG, LLC ("Navitas KY") asking the Federal Energy Regulatory Commission ("the FERC") to rehear the agency's final decision issued May 17, 2019 in Docket No. PR17-54-000, "Letter Order Pursuant to § 375.307, B&W Pipeline, LLC." In that Order, the FERC set an interstate transportation rate for B&W Pipeline, effective July 17, 2017.

The letter from Ms. Novak implies that the Kentucky Public Service Commission should wait until the FERC rules on the request for rehearing before taking any further action in this docket. For the reasons set out below, I do not think any such delay is necessary.

The request for rehearing was filed pursuant to 18 C.F.R. § 385.713. Subsection (a)(3)(b) of that rule states, "A request for rehearing by a party must be filed not later than 30 days after issuance of any final decision or other final order in a proceeding." Consistent with that rule, the Letter Order issued in the B&W Pipeline case states, "This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2018)."

The B&W order was issued May 17, 2019. Although well aware of the B&W proceeding, Navitas KY chose not to participate in that docket and did not file the request for rehearing until August 7, 2019, well after the 30-day deadline. The rehearing request does not even offer an explanation for the late filing. It is therefore likely that the FERC will summarily deny the untimely request.¹

Before responding to the arguments raised in the rehearing request, I would first like to clarify how the FERC rate decision will impact customers of Navitas KY.

To understand the impact of the FERC decision on Kentucky customers, it is necessary first to understand what the Tennessee Commission did in 2016 and how Navitas KY and Navitas TN interpreted the Tennessee Order.

¹ B&W will not file an answer to the rehearing petition unless requested by the FERC. Rule § 385.713(d) states the agency "will not permit answers to requests for rehearing."

In an Order issued March 10, 2016, the Tennessee Commission set rates for B&W Pipeline which at that time transported gas for three customers: Navitas TN, its affiliate Navitas KY, and a B&W affiliate called Rugby Energy, LLC. (Rugby Energy no longer exists. The pipeline's sole customers today are Navitas TN and Navitas KY.) The state agency determined that B&W Pipeline's total annual revenue requirement (interstate and intrastate) was \$281,834 and set rates that, if paid by all three of the pipeline's customers, were intended to produce that amount. The state set a flat charge of \$13,897 per month and a volumetric charge of \$0.31 per Mcf to be charged on all gas transported for the two Navitas companies to Tennessee and Kentucky. The flat charges billed to Navitas, which covered about 60% of the pipeline's total revenue requirement, have been paid each month by the parent of the two Navitas companies and, under the supervision of the Tennessee and Kentucky commissions, have been passed through to Navitas customers in Tennessee and Kentucky on a pro rata basis. Navitas TN has also been paying B&W the \$0.31 per Mcf volumetric charge on gas that is consumed in Tennessee. Navitas KY, however, has declined to pay the volumetric charge, pointing out that the Tennessee Commission has no authority to set a transportation rate for gas consumed in Kentucky.²

Now that the FERC has set a rate for B&W's interstate transportation service, that rate applies to all gas shipped to Navitas KY. Moreover, the FERC rate is effective as of July 17, 2017. This means that Navitas KY will be billed the FERC rate each month, beginning July 17, 2017. To the extent, however, that Navitas KY has already passed through to its Kentucky customers charges for interstate gas transportation during this same period, those amounts will offset in part the impact on customers of applying the FERC rate back to July 17, 2017.

I will now respond briefly to the four arguments raised in the request for rehearing.

Navitas KY continues to claim that the FERC's decision in the B&W rate case is in conflict with the FERC's "Order Determining Service Area" issued June 15, 2017 allowing Navitas KY to operate as a local distribution company in both Kentucky and a small portion of Tennessee. For the reasons explained in my letter of August 8, 2019, the two orders address completely different matters and are not in conflict. One order sets an interstate rate for B&W Pipeline to transport gas for Navitas KY. The other order allows Navitas KY to transport gas within its local retail service area, which straddles two states, without being regulated as an interstate pipeline.

Navitas KY next argues that the FERC rate order "contravenes" the Tennessee rate order of 2016. The federal and state agencies operate in different jurisdictions, of course. As I have previously explained, the FERC has exclusive jurisdiction over interstate transportation and has set a rate for all gas shipped in interstate commerce to Navitas KY and, as the K.P.S.C. concluded in its Order issued August 6, 2109, the FERC-established rate supersedes any rate set by Tennessee.

² Navitas KY was legally correct but also inconsistent since, as explained above, the Kentucky company does pay its pro rata share of the flat, monthly charge set by the Tennessee Commission and passes those charges through to Kentucky customers.

The third issue raised by Navitas KY is that it seems “substantially unlikely” that the FERC would “reach such a dramatically different conclusion from the State of Tennessee.”

Navitas KY has apparently not read the Settlement Agreement between B&W Pipeline and the FERC staff, a copy of which can be found both on the FERC website (Docket No. PR17-54-000) and the Tennessee Commission website (Docket No. 15-00042). The Settlement Agreement details how the parties arrived at a total annual revenue requirement for B&W of \$381,789. Furthermore, the FERC-approved rate is based on the pipeline’s actual throughput of 140,507 Mcfs, while the Tennessee Commission set rates based on projected and unrealized throughput of 227,861 Mcfs, including usage and revenue from a customer that no longer exists.

Even a cursory review of the Settlement Agreement and the attached exhibits demonstrates that the federal agency’s staff conducted an exhaustive investigation of B&W Pipeline’s rate case filing and arrived at an agreed-upon result that is well supported by the record and about half of what the pipeline had originally requested.

The final point in the request for rehearing is an allegation that B&W Pipeline has “fail[ed] in its obligation to minimize the impact to Navitas customers in this proceeding.” The company states that B&W should have been charging Navitas KY the \$0.31 volumetric rate “as soon as they were able such that customers could budget and plan.” These comments overlook the fact that B&W Pipeline tried to collect the volumetric charge from Navitas KY but, as I have explained, Navitas KY refused to pay it. Had Navitas KY paid it, the arrearage now owed to B&W Pipeline would be significantly less.

In conclusion, the request for rehearing was not timely filed and will likely be summarily denied by the FERC. The federal agency has exclusive jurisdiction over interstate transportation and has set a rate that supersedes any rate set by Tennessee. None of the issues raised in the rehearing request merits reconsideration of the FERC’s order nor should those issues raise any concerns at the Kentucky Commission.

Please do not hesitate to contact me if you have any questions about this letter.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS, LLP



Henry Walker

cc: Vanessa Novak
Don Baltimore
Kent Hatfield