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**Bradley**

September 16, 2019

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PUBLIC SERVICE  
COMMISSION

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

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

Dear Ms. Pinson:

The attached Order from the Federal Energy Regulatory Commission (“the FERC”) was released September 4, 2019. The Order denies on procedural grounds the request of Navitas KY that the federal agency reconsider its decision in the B&W Pipeline rate case.

Although the FERC did not need to go any further, the agency also decided, sua sponte, to correct a “misapprehension of law” on the part of Navitas KY, explaining that B&W Pipeline’s Statement of Operation Conditions (i.e., B&W’s interstate tariff) applies to the transportation of gas in interstate commerce and that there is no inconsistency between the FERC’s decision setting a rate for gas shipped by the pipeline to Navitas KY and the agency’s order granting Navitas KY “Local Distribution Company” status under section 7(f) of the Natural Gas Act.

I respectfully submit that the FERC Order should put an end to any further debate as to whether the FERC rate or the Tennessee rate applies to gas shipped via B&W’s facilities to Navitas KY for consumption in Kentucky.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS, LLP

  
Henry Walker

Attachment

cc: Don Baltimore  
Kent Hatfield  
Juan Duran  
Joseph M. Irwin

4835-5581-0724.1

168 FERC ¶ 61,143  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

B&W Pipeline, LLC

Docket No. PR17-54-002

ORDER DISMISSING REQUEST FOR REHEARING

(Issued September 4, 2019)

1. On August 9, 2019, Navitas KY NG, LLC (Navitas) filed a request for rehearing of a July 11, 2019 delegated order<sup>1</sup> that accepted B&W Pipeline, LLC's (B&W) unopposed Statement of Operating Conditions (SOC), which was identical to the *pro forma* SOC filed as part of the unopposed Stipulation and Agreement (Settlement) that the Commission approved on May 17, 2019.<sup>2</sup> We dismiss the request for rehearing as procedurally barred, but *sua sponte* clarify the underlying orders.
2. The underlying orders in this proceeding were issued pursuant to the Natural Gas Policy Act of 1978 (NGPA). NPGA § 506(a)(2) only allows the Commission to consider requests for rehearing from persons who are already party to the proceeding.<sup>3</sup> Rule 713(b) of the Commission's regulations contains the same limitation.<sup>4</sup> Any person seeking to intervene to become a party must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure.<sup>5</sup> At no point during the

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<sup>1</sup> *B&W Pipeline, LLC*, Docket No. PR17-54-001 (July 11, 2019) (delegated order).

<sup>2</sup> *B&W Pipeline, LLC*, Docket No. PR17-54-000 (May 17, 2019) (delegated order).

<sup>3</sup> 15 USC 3416 (a)(2) (2012).

<sup>4</sup> 18 C.F.R. § 385.713(b) (2019).

<sup>5</sup> 18 C.F.R. § 385.214(a)(3).

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two years that this docket was open – during which time the Commission issued three notices inviting interventions<sup>6</sup> – did Navitas seek to intervene.

3. Navitas' request for rehearing does present one misapprehension of law that warrants a *sua sponte* clarification. Navitas argues that by accepting B&W's filing, the Commission "effectively removes Navitas' [Local Distribution Company] status," under section 7(f) of the Natural Gas Act, "and subjects Navitas to FERC regulation and a FERC-imposed rate scheme obtained by a third party (B&W Pipeline, LLC)."<sup>7</sup> This is incorrect. A Statement of Operating Conditions regulates the pipeline, not the shipper. Navitas is only subject to B&W's SOC to the extent that it wishes to ship natural gas in interstate commerce via B&W's facilities. Entities that have Local Distribution Company status under section 7(f) of the Natural Gas Act do not risk their section 7(f) status by becoming shippers, nor do they risk their section 7(f) status by any action that the Commission may take towards an unrelated pipeline's settlement filings.

The Commission orders:

The request for rehearing is dismissed.

By the Commission.

(SEAL)

Kimberly D. Bose,  
Secretary.

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<sup>6</sup> Docket No. PR17-54-000, Combined Notice of Filings, July 19, 2017 and Combined Notice of Filings, March 27, 2019. Docket No. PR17-54-001, Combined Notice of Filings, June 11, 2019.

<sup>7</sup> Request for Rehearing at 3.