COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF NAVITAS KY NG, LLC FOR AN ALTERNATIVE RATE FILING PURSUANT TO 807 KAR 5:076	)))	CASE NO. 2024-00252

<u>O R D E R</u>

On April 15, 2025, Navitas KY NG, LLC (Navitas KY), pursuant to KRS 278.400, filed for reconsideration of the Order entered March 26, 2025, in which the Commission denied Navitas KY's August 2, 2024[1] requested rate increase using the 807 KAR 5:076 Alternative Rate Filing (ARF) provisions. In its March 26, 2025 Order, the Commission denied the request because Navitas KY failed to provide sufficient evidence to establish a revenue requirement for the Commission to approve the proposed rates.[2] The Commission also noted that Navitas KY should file a cost of service study (COSS) if it sought to implement its planned rate design allocation.[3] Additionally, the Commission denied Navitas KY's proposal to change billing unit measurements from Mcf to Ccf[4] and change minimum billing usage beginning at one Ccf.[5]

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[1] Application was accepted for filing as of September 17, 2024. *See* Deficiency Cured Letter (filed Sept. 18, 2024).

[2] Orde r(Ky. PSC Mar. 26, 2025) at 7–10.

[3] Order (Ky. PSC Mar. 26, 2025) at 19.

[4] One thousand cubic feet to one hundred cubic feet.

[5] Order (Ky. PSC Mar. 26, 2025) at 17.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for requests for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when "the evidence presented leaves no room for difference of opinion among reasonable minds."[6] An order can only be unlawful if it violates a state or federal statute or constitutional provision.[7]

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

MOTION

Navitas KY argued, in its rehearing motion, that a complete denial of rate relief "does not comport with" the requirement under KRS 278.030 that Navitas KY be permitted to collect fair, just and reasonable rates for providing natural gas service; it "challenges Navitas KY's ability to carry on in a safe and sound manner, and harms the rural customers of Eastern Kentucky that deserve the option of natural gas service."[8] Navitas

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[6] *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

[7] *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

[8] Application for Rehearing at 2.

KY indicated a plan to file for a rate increase again in 2025, and asked for an interim rate increase for Clinton County residential and commercial customers.[9]

Regarding rate design, Navitas KY interpreted the Commission's recommendation that Navitas KY provide a COSS in support of its rate design as a condemnation of unifying rates of the same class in different counties.[10] Navitas KY argued that because 807 KAR 5:001, Section 16(4)(u), only requires utilities with annual gross revenues greater than $5 million to file a COSS, Navitas KY need not file a COSS to support its proposed rate design.[11]

Finally, regarding the proposed shift to billing based on Ccf instead of Mcf, Navitas KY stated that this request was meant to result in uniformity between jurisdictions and should not "stand in the way of reasonable rate relief."[12]

DISCUSSION AND FINDINGS

Revenue Requirement

Navitas KY's rehearing request does not suggest that rehearing is necessary to correct material errors or omissions, nor that new evidence should be admitted that was not readily discoverable at the time of the Commission denial of the ARF application. Instead, Navitas KY's basis for seeking rehearing on the issue of revenue requirement is the argument that the Commission's denial of its ARF application was unreasonable or unlawful, based on its characterization of complete denial of relief as impermissible under

[9] Application for Rehearing at 3.

[10] Application for Rehearing at 3–4.

[11] Application for Rehearing at 4.

[12] Application for Rehearing at 3.

KRS 278.030 and unreasonable due to the decision's effect on Navitas KY's ability to provide safe and reliable service.

Navitas KY's ARF Form 1 – Attachment RR-OR,[13] is a form created by the Commission, substantively completed by the utility, and the revenue requirement calculation on this form should match the information from Navitas KY's 2023 Annual Report. Commission Staff reviews the form and annual report for accuracy and to inquire further into how different components of the revenue requirement were calculated. Commission regulation 807 KAR 5:076, Section 9, requires an ARF applicant to base rates on a 12-month historical test period, adjusted for known and measurable changes, that coincides with the applicant's annual report for the immediate past year.[14]

One error in Navitas KY's application, which alone would have been fatal to the application, was the misclassification of expenses and revenues. KRS 278.220 authorizes the Commission to establish a system of accounts, and specifically for gas utilities, the system "established shall conform as nearly as practicable to the uniform system of accounts adopted or approved by the Federal Energy Regulatory Commission (FERC)..[.]" Navitas KY stated that it did not conform to this system for under/over-collection of gas costs.[15] Navitas KY stated it uses Account 1500, Costs in Excess of Billings; Account 2500, Billings in Excess of Costs; and Account 414, Other Utility

[13] Application, Attachment 4.

[14] In addition, 807 KAR 5:076 Section 3 sets forth the evidence for which a decision should be based. Administrative regulation 807 KAR 5:076 Section 3(1)" Applicant's annual report for the immediate past year and the annual reports for the two (2) prior years, if the utility has been in existence that long;"

[15] Navitas KY's Response to Commission Staff's Third Request for Information (Staff's Third Request) (filed Dec. 26, 2024), Item 12. Commission Staff asked Navitas KY to correct this in an earlier data request, but Navitas KY claimed it followed the FERC Uniform System of Accounts. *See* Navitas KY's Response to Staff's Second Request, Item 9.

Operating Income (a revenue account) to record its under/over-recovery of gas costs.[16] The correct accounts under the uniform system of accounts approved by FERC for the under/over-collection of gas costs are Account 191, Unrecovered Purchased Gas Cost and Account 805.1, Purchased Gas Cost Adjustments (an expense account).[17] As shown in Navitas KY's Attachment RR-OR, expenses are multiplied by an operating ratio to calculate the revenue requirement. However, because Navitas uses revenue accounts to track under/over collection of gas costs and this ratio is not applied to revenue, incorrectly including or excluding entries from expenses will result in an incorrect revenue requirement calculation. Although Navitas KY provided a copy of its General Ledger,[18] the Commission could not determine from the General Ledger descriptions which entries were misclassified. Therefore, the Commission could not determine correct amounts for operating expenses and revenues; accordingly, it could not determine a reasonable revenue requirement for ratemaking purposes.

Additionally, even if the accounts used were corrected, the Commission could not confirm the balance of ($222,737) in Account 414, Other Utility Operating Income, referred to by Navitas KY as "Unbilled Revenue."[19] The sum appears to be incorrectly

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[16] Navitas KY's Response to Staff's Third Request, Item 12. Accounts 1500 and 2500 do not appear in the FERC USoA.

[17] Code of Federal Regulations, FERC Guide, Title 18, Chapter 1, Subchapter F, Part 201, 191 Unrecovered purchased gas costs. eCFR :: 18 CFR Part 201 -- Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act

[18] Navitas KY's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Oct. 23, 2024), Item 9(a) (confidentially filed).

[19] *See* Navitas KY's Response to Staff's Third Request, Item 12. In this response, Navitas KY stated that the total was ($222,717) but provided components that total to ($222,747). *See also* Navitas KY's Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed Nov. 22, 2024), Item 3(d). Commission Staff asked about this amount's components, and Navitas KY responded that it was in the general ledger. *See also* Navitas KY's Response to Staff's First Request, Item 42. Navitas

excluded from Navitas KY's original 2023 Annual Report operating revenues but included as a miscellaneous income deduction.[20] Navitas KY explained that these under-billings and overbillings were related to the Gas Cost Adjustment (GCA) and unrecovered billings resulting from accrual accounting practices.[21] However, Navitas KY did not provide a breakdown of which portions consisted of GCA entries, which should be excluded from revenue requirement. In addition, the provided explanation of the amounts appears to refer to a refund of overbilling as an increase to revenues and the collection of an underbilling as a decrease to revenues. Navitas KY also referenced the collection of "residuals determined in Case No. 2020-00396," but Navitas KY was not authorized to collect any amount from ratepayers in that case except base rates.[22] Again, these issues prevented the Commission from being able to confirm the revenue requirement and determine if the rates and other changes requested by Navitas KY were reasonable.

In addition, the Commission determined that Navitas KY did not provide the necessary support for its allocation methodology for costs allocated to Kentucky operations incurred by its parent company.[23] Navitas KY explained in Attachment 2 to its ARF application that its allocation was calculated as follows: all "direct costs are not

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KY stated that Other Operating Revenues included ($222,737) of adjustments to the Gas Cost Adjustment (GCA) and the quarterly under/over-recovery of the GCA.

[20] Navitas KY's original 2023 Annual Report at 19 and 21. *See* Application, Attachment RR-OR; Navitas KY's Response to Staff's First Request, Item 42; and Navitas KY's Response to Staff's Third Request, Item 14 at 3. Navitas KY stated that Other Operating Revenues of ($183,128) included ($222,737) in Account 414. When Navitas KY revised its 2023 Annual Report, it reduced operating revenues by $183,128 but did not remove the ($222,738) from miscellaneous deductions.

[21] Navitas KY's Response to Staff's Third Request, Item 12.

[22] Navitas KY's Response to Staff's Third Request, Item 12. Case No. 2020-00396, *Electronic Application of Navitas KY NG, Johnson County Gas Company, and B & H Gas Company for Approval of Acquisition, Transfer of Ownership, and Control of Natural Gas Utility Systems* (Ky. PSC Apr. 27, 2021).

[23] Order (Ky. PSC Mar. 26, 2025) at 11.

allocated, but are borne fully by the jurisdiction in which they are incurred."[24] The remaining costs are "fifty-percent times the percentage of customers in the jurisdiction plus 50% times the plant in the jurisdiction."[25] Navitas KY referred to this as the "Atmos method" (Atmos method) is used in Tennessee and Oklahoma,[26] and asserted that this method is "reflective of the allocation practices of Atmos Energy Corporation" in Kentucky.[27] Navitas KY did not cite a case in which the Commission has approved the purported Atmos method.

Navitas KY did not have an allocation manual until after the Commission issued its March 26, 2025 Order.[28] Navitas KY's explanation of its allocation methodology was limited to a three-sentence description and its justification was limited to stating that this methodology was accepted in Oklahoma and Tennessee without citing those cases in its application or in its application for rehearing.[29] Navitas KY should determine which expense categories should be assigned to customer count and which should be assigned to plant-in-service.

Since the Commission was unable to verify that Navitas KY's requested rates were based on a revenue requirement calculated using accurate operating expenses for the period required by regulation, the Commission found that Navitas KY had failed to provide

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[24] Application, Attachment 2 at 6.

[25] Application, Attachment 2 at 6.

[26] Application, Attachment 2 at 6.

[27] Application for Rehearing at 5.

[28] Application for Rehearing at 5.

[29] Application, Attachment 2 at 6.

sufficient evidence the Commission could rely upon to formulate and Order fair, just and reasonable rates.

Pursuant to KRS 278.190(3), Navitas KY has the burden to establish that its proposed rate increase is just and reasonable. Navitas KY's assertion that any circumstance exists that mandates the Commission to approve a rate increase based on unreliable and in some instances, contrary, information contradicts KRS 278.190(3). The Commission finds that Navitas KY has not demonstrated that the Commission's finding of insufficient evidence to determine reasonable and just rates is unlawful or unreasonable. The utility holds the key to the information needed to prove with sufficient evidence what amount of revenue is necessary to provide reasonable, adequate service and ensure stakeholders and the utility receive fair, just and reasonable rates in return. Here, Navitas KY failed to provide that information, and no new information has been presented in this motion to revisit the Commission's findings.

<u>Rate Design</u>

Since Navitas KY did not meet its burden to establish revenue requirement, the Commission did not need to make findings on Navitas KY's rate design. However, in an effort to provide guidance for potential future rate case filings, the Commission identified two rate design issues for Navitas KY to focus on.

First, when considering Navitas KY's proposed rate design changes, the Order indicated that a COSS is the best evidence for determining rate design.[30] In contrast to an alleged policy aversion to consolidating rates within a class suggested by Navitas KY, the Commission has ordered similar consolidation when supported by sufficient evidence.

[30] Order (Ky. PSC Mar. 26, 2025) at 19.

In Case No. 2022-00042, the Commission unified residential sewer rates across several geographically distinct service locations on the following basis:

> [T]here are reasons for approving a unified rate as opposed to a single rate for each system, including that a unified rate is likely to promote regionalization, which should drive down costs in the long term by allowing utilities to take advantage of economies of scale, and that a unified rate will serve to levelized rates in the long term so that each system will not experience a significant rate shock every time it requires significant investment or some unexpected cost, which all systems will experience at some point. The Commission finds that the proposed unified monthly flat rate design, with wastewater multi-family dwellings and commercial customers monthly rates based on residential equivalency, should be approved for Bluegrass Water's customers.
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> . . . .
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> A separate rate for each geographically distinct merged system of Bluegrass Water would create unreasonable and undue hardship to individuals in some areas served by Bluegrass Water. The Commission finds that the proposed unified rate, with wastewater multi-family dwellings and commercial customers monthly rates based on residential equivalency, should be approved for Bluegrass Water's customers.[31]

The Order did not require Navitas KY to file a COSS as suggested in the rehearing application. However, a lack of a COSS or similar evidence does limit Navitas KY's ability to establish new rates because, specifically as to Navitas KY's application, it presented no convincing evidence to support the creation of additional rate classes it used to differentiate types of customers and accurately apportion costs based on the expenses incurred to serve that class. However, a lack of COSS is not necessarily a bar to unifying residential rates from different counties. Navitas KY must provide sufficient evidence that

[31] Case No. 2022-00432, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Sewage Rates* (Ky. PSC Feb. 14, 2024), Order at 92-96 (citation omitted).

its proposed rates and allocation reflect a fair, just and reasonable apportionment of expenses related to serving each individual class as a cost causer.

Second, the Order indicated that the evidence supplied by Navitas KY was insufficient to allow the Commission to approve a switch to billing based on a minimum usage of one Ccf.[32] Navitas KY may provide additional evidence or arguments in favor of the basis for this proposed change in a refiled rate case. However, based on the filings in this case, the support for the request is insufficient and nothing in the motion changed this fact. As proposed, the change impacts ratepayers in the following way: less usage triggers a minimum volumetric charge, resulting in billing that would not have otherwise occurred.[33] The Commission's finding regarding this billing change had no bearing on the denial of Navitas KY's application for an alternative rate adjustment as a result of insufficient evidence as to the revenue requirement.

<u>Interim relief</u>

Navitas KY requests interim rate relief for Clinton County customers, noting that rates have not been adjusted since 2011.[34] However, while rehearing is not the appropriate time to seek interim rate relief, KRS Chapter 278 does provide utilities, including Navitas KY, avenues to request relief. In this application Navitas KY did not evoke the mechanism for obtaining interim relief. Under KRS 278.190(2),

> [I]f the commission, at any time, during the suspension period, finds that the company's credit or operations will be materially impaired or damaged by the failure to permit the rates to become effective during the period, the commission may,

[32] Order (Ky. PSC Mar. 26, 2025) at 17.

[33] For example, when a customer disconnects service before using one Mcf but after using one Ccf.

[34] Application for Rehearing at 3.

> after any hearing or hearings, permit all or a portion of the rates to become effective under terms and conditions as the commission may, by order, prescribe.

Navitas KY did not seek interim relief under this provision during the suspension period. If immediate rate relief is necessary, the Commission encourages Navitas KY to consider filing a new rate case as soon as possible, and request rates become effective pursuant KRS 278.190(2) if Navitas KY believes its credit or operations will be materially impaired or damaged by the failure to permit the rates to become effective during the six-month suspension period set forth by 807 KAR 5:076, Section 7.

Conclusion

Navitas has failed to provide any new information or specific omissions or material misstatements of fact warranting relief pursuant to KRS 278.400. As noted in the final Order issued in this matter and this Order, Navitas KY's application contained incorrect, misleading or erroneous information, which prevented the Commission from determining the utility's revenue requirement. These issues were never resolved or explained in a way that conformed to basic utility accounting standards, thus preventing the Commission from setting rates that are fair, just and reasonable. The Commission agrees that a utility may collect rates to provide adequate service, but the utility must provide sufficient information for the Commission to make a lawful and reasonable decision.

IT IS THEREFORE ORDERED that:

1. Navitas KY's application for rehearing is denied.

2. Nothing in this Order shall be construed to limit Navitas KY's ability to file another rate case without delay.

3. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

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ATTEST:

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ENTERED
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KENTUCKY PUBLIC SERVICE COMMISSION

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