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February 2, 2018

## PSC STAFF OPINION 2018-002

Klint Alexander  
Navitas KY NG, LLC  
1767 Nottage Ct.  
Laramie, WY 82072

Re: Request for Legal Staff Opinion – Navitas KY NG, LLC

Dear Mr. Alexander:

The Commission acknowledges receipt of your letters dated December 4, 2017, and January 26, 2018, that were filed on behalf of Navitas KY NG, LLC. In the letters, you request a staff opinion regarding the construction of a new natural gas pipeline and the subsequent rates that could be charged for purchase of natural gas transported through the new pipeline. This opinion represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and is not binding on the Commission should the issues be formally presented for Commission resolution.

Commission Staff understands the facts to be as follows: Company A and Company B are natural gas utilities regulated by the Commission. Company A plans to construct a "transport" line ("Line A") approximately 12 miles across a county line to connect to a low volume gas transmission line ("Line B") owned by Company B. After Line A is constructed, Company A will utilize Line A to purchase or transport natural gas from Company B. There will be a 200 percent increase in throughput on Line B from natural gas being transported through Line B to Line A. Company B currently provides natural gas service pursuant to a Commission-approved tariff.

The questions presented are:

1. If Company A constructs Line A, how is Company B's tariff rate set on line B taking into account the 200 percent increase in throughput?

2. May Company A and Company B enter into a special contract calling for a transport rate through Line B that is less than the Company B's current tariff rate?
3. Would Company A propose a prospective transport rate for new transport Line A?

In regard to questions number 1 and 2, there are initial issues whether Company A needs to obtain a certificate of public convenience and necessity ("CPCN") to construct the line. Additionally, if financing is involved, Company A needs approval of financing if the financing is for more than two years.

Briefly, the CPCN statute, KRS 278.020(1), states in pertinent part:

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

The potential exemption for the need to obtain a CPCN is if Line A qualifies as "an ordinary extension of an existing system in the ordinary course of business." The Commission's Administrative Regulation, 807 KAR 5:001 , Section 15(3), provides the following criteria in applying this exemption:

Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

With regard to considering whether the capital outlay materially affects the utility's existing financial condition, the Commission has in the past often made this determination based on the percentage increase in the utility's net plant caused by the

new construction and whether approval of financing will be needed. Without additional information, Commission Staff is unable to provide an opinion whether a CPCN is required for Line A, or whether it is exempt as an ordinary extension in the usual course of business. However, we thought it important to make you aware that a CPCN may be required prior to the construction of Line A.

Similarly, KRS 278.300 may apply if Company A must obtain financing to construct Line A. KRS 278.300(1) provides that:

No utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the commission.

KRS 278.300 does not apply to “notes issued by a utility . . . that are payable at periods of not more than two (2) years.”

Again, Commission Staff is unable to provide an opinion whether Company A must obtain Commission Approval if it obtains financing to construct Line A without more information. However, we thought it important to make you aware of this regulation.

In regard to rates charged by Company B, after Company A constructs Line A, Company B must charge Company A the rate on file in Company B’s tariff for gas sales or transportation service, whichever is appropriate. If Company B believes that the increased throughput causes its rate to no longer be fair, just and reasonable, it can file a new rate applicable to all customers, or enter into a special contract rate with Company A and then file that contract with the Commission for approval. Alternatively, Company A could file a complaint with the Commission if it believes Company B’s rate is not fair, just and reasonable.

If Company B decides to charge anything other than its tariffed rate to Company A, pursuant to KRS 278.180, Company B must provide thirty days’ notice to the Commission, stating the proposed change in rates and in any other condition of service, and the effective date for the changes.

If Company B enters into a special contract, it must file the special contract with the Commission pursuant to KRS 278.160 and 807 KAR 5:011, Section 13. The proposed special contract rate may be lower, but any discount from the filed rate must be supported by Company B.

Question 3 inquires whether Company A would propose a prospective transport rate for new transport Line A. Company A must offer its new line for new customers to

connect to Company A's system as either sales or transportation customers. If the new customers were sales customers, Company A would charge the tariff rate currently in effect for natural gas sales service. If the new customers were transportation customers, Company A would charge the tariff rate currently in effect for natural gas transportation service.

If Company A does not have a tariffed transportation rate, Company could file with the Commission to establish a transportation rate that is equal to its currently approved base rate for natural gas sales service. In the alternative, Company A could file a base rate application to establish a new rate. Last, Company A could change its tariff to offer transportation service on an open access basis by special contract, with each individual contract approved as transportation customers are added.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Nancy Vinsel, Assistant General Counsel, at (502) 782-2582.

Sincerely,



Jeb Pinney  
Deputy General Counsel

NJV/kg