

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC ALLEGED FAILURE OF NAVITAS)	
KY NG, LLC TO COMPLY WITH KRS 278.030,)	CASE NO.
KRS 278.180(1), KRS 278.274, COMMISSION)	2025-00010
ORDERS, AND ITS GAS COST RECOVERY)	
TARIFF)	

ORDER

The Commission, on its own motion and pursuant to KRS 278.040, KRS 278.250, KRS 278.260(1), KRS 278.270, and KRS 278.990, initiates this proceeding to investigate the alleged failure of Navitas KY NG, LLC (Navitas KY) to comply with KRS 278.030, KRS 278.180(1), the Commission Orders referenced below, and its Gas Cost Recovery (GCR) tariff. The Commission will also determine whether civil penalties should be assessed to Navitas KY pursuant to KRS 278.990.

The alleged violations are related to the following actions regarding calculation of its GCR filings as summarized in the final Order in Case No. 2023-00428¹ that (1) Navitas KY included expenses not related to the purchase or transportation of natural gas in its GCR filings; (2) Navitas KY used Expected Gas Cost (EGC) rates that were not supported by sufficient data and were significantly in excess of actual gas costs; (3) in the final Order for Case No. 2020-00396,² Navitas KY was ordered to refund GCR overcollection to

¹ Case No. 2023-00428, *Electronic Purchased Gas Adjustment Filing of Navitas KY NG, LLC* (Ky. PSC Oct. 31, 2024), Order.

² 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), Order at 19.

customers of the utility and that they should be “solely responsible for the refund,” but may have passed the cost of the refunds on to customers through rates in contravention of the Order, its GCR tariff,³ and KRS 278.274; (4) Navitas KY made numerous spreadsheet errors in its GCR filings, including in eight cases over the past five years;⁴ (5) Navitas KY failed to file with the Commission all required annual reconciliations of monthly surcharge collections and reimbursement required in Case No. 2019-00430;⁵ (6) Navitas KY failed to provide the Commission with tracker updates and notice that recovery of acquisition-related costs had been fully recovered by surcharges in its quarterly GCR rate report filings cover letter, as required in three cases;⁶ and (7) Navitas KY filed GCR filings that were late and/or included proposed effective dates that did not correspond with the first of each calendar quarter period in violation of its GCR tariff⁷ or

³ P.S.C. KY NO. 1, Original Sheet No. 24 (issued Mar. 1, 2011), effective Mar. 1, 2011.

⁴ Case No. 2020-00103, *Electronic Purchased Gas Adjustment Filing of Navitas KY NG, LLC* (Ky. PSC Apr. 30, 2020), Order; Case No. 2020-00200, *Electronic Purchased Gas Adjustment Filing of Navitas KY NG, LLC* (Ky. PSC July 29, 2020), Order; Case No. 2021-00136, *Electronic Purchased Gas Adjustment Filing of Navitas KY NG, LLC* (Ky. PSC Apr. 28, 2021), Order; Case No. 2021-00278, *Electronic Purchased Gas Adjustment Filing of Navitas KY NG, LLC* (Ky. PSC July 30, 2020), Order; Case No. 2022-00189, *Electronic Purchased Gas Adjustment Filing of Navitas KY NG, LLC* (Ky. PSC Aug. 4, 2022), Order; Case No. 2023-00002, *Electronic Purchased Gas Adjustment Filing of Navitas KY NG, LLC* (Ky. PSC Feb. 9, 2023), Order; Case No. 2023-00215, *Electronic Purchased Gas Adjustment Filing of Navitas KY NG, LLC* (Ky. PSC July 31, 2023), Order; Case No. 2023-00428 (Ky. PSC Oct. 31, 2024), Order.

⁵ Case No. 2019-00430, *Electronic Application of Navitas KY NG, LLC For an Alternate Rate Adjustment* (Ky. PSC June 17, 2020), Order.

⁶ Case No. 2022-00109, *Electronic Purchased Gas Adjustment Filing of Navitas KY NG, LLC* (Ky. PSC Apr. 29, 2022), Order at 4; Case No. 2023-00002, *Electronic Purchased Gas Adjustment Filing of Navitas KY NG, LLC* (Ky. PSC Feb. 9, 2023) Order; Case No. 2023-00091, *Electronic Purchased Gas Adjustment Filing of Navitas KY NG, LLC* (Ky. PSC Apr. 28, 2023), Order.

⁷ P.S.C. KY NO. 1, Original Sheet No. 24.

were filed with less than 30 days' notice from the proposed effective date in violation of KRS 278.180(1).⁸

On its own motion, the Commission should incorporate by reference the record in all cases identified in ordering paragraph 4 below pursuant to 807 KAR 5:001, Section 11(5).

LEGAL STANDARD

The Commission has exclusive jurisdiction over the rates and service of utilities and is charged with enforcing the provisions of KRS Chapter 278.⁹ KRS 278.260 provides that the Commission, on its own motion, may investigate whether “any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable.” KRS 278.030 limits utilities to demanding, collecting and receiving “fair, just and reasonable rates.”

KRS 278.990(1) states

If any utility willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or does any act therein prohibited, or fails to perform any duty imposed upon it under those sections for which no penalty has been provided by law, or fails to obey any order of the commission from which all rights of appeal have been exhausted, the utility shall be subject to a civil penalty to be assessed by the commission for each offense not less than twenty-five dollars (\$25) nor more than two thousand five hundred dollars (\$2,500). Each act, omission, or failure by an officer, agent, or other person acting for or employed by a

⁸ Case No. 2022-00004, *Purchased Gas Adjustment Filing of Navitas KY NG, LLC* (Ky. PSC Feb. 3, 2022); Case No. 2022-00189, *Electronic Purchased Gas Adjustment Filing of Navitas KY NG, LLC* (Ky. PSC Aug. 4, 2022), Order; Case No. 2022-00331, *Electronic Purchased Gas Adjustment Filing of Navitas KY NG, LLC* (Ky. PSC Nov. 3, 2022), Order; Case No. 2023-00002, (Ky. PSC Feb. 9, 2023), Order; Case No. 2023-00215, *Electronic Purchased Gas Adjustment Filing of Navitas KY NG, LLC* (Ky. PSC July 31, 2023), Order; Case No. 2023-00325, (Ky. PSC Oct. 30, 2023), Order; Case No. 2024-00184, *Electronic Purchased Gas Adjustment Filing of Navitas KY NG, LLC* (Ky. PSC July 3, 2024), Order.

⁹ See KRS 278.040(1)-(2).

utility and acting within the scope of his employment shall be deemed to be the act, omission, or failure of the utility.

The Kentucky Court of Appeals expressed that willfulness was a prerequisite to assessment of a civil penalty.¹⁰ Additionally, pursuant to the plain language of KRS 278.990(1), “willfully” clearly applies to utilities and their officers, agents, or employees violating specific statutes or regulations. This interpretation was supported by a recent Commission decision, which stated that “the Commission must also determine whether these violations are willful before any penalties may be assessed under KRS 278.990” and defined willful behavior as follows:

A willful violation has been defined as an act that is committed intentionally, not accidentally or involuntarily. It has also been stated that a willful violation does not necessarily and solely entail an intention to do wrong and inflict injury but may include conduct which reflects an indifference to its natural consequences. For civil and administrative proceedings, a willful violation has been explained as one which is intentional, knowing, voluntary, deliberate or obstinate, although it may be neither malevolent nor with the purpose to violate the law.¹¹

The Kentucky Court of Appeals similarly adopted the Black’s Law Dictionary definition of willful:¹²

Proceeding from a conscious motion of the will; voluntary; knowingly; deliberate. Intending the result which actually comes to pass; designed; intentional; purposeful; not accidental or involuntary.

¹⁰ *Public Service Com'n v. Jackson County Rural Elec. Co-op., Inc.*, 50 S.W.3d 764, 769 (Ky. App. 2000).

¹¹ Case No. 2021-00339, *Electronic Alleged Failure of North Manchester Water Association, Inc., Its Officers, Steve Davis, Bill Hurd, Carl Gregory Hoskins, Bobby Wolfe, Henry Smith, Ted Woods, Carl David Crawford, and Its Manager, Jerry Rice, to Comply with KRS 278.140, KRS 278.230, 807 KAR 5:006, Sec. 4, and KRS 278.990* (Ky. PSC Mar. 7, 2023), Order at 6 (citations omitted).

¹² *Huddleston v. Hughes*, 843 S.W.2d 901, 905 (Ky. App. 1992), quoting *Black's Law Dictionary*, 1599 (6th ed. 1990). (Emphasis removed).

Premeditated; malicious; done with evil intent, or with a bad motive or purpose, or with indifference to the natural consequences; unlawful; without legal justification.

DISCUSSION

The Commission finds that an investigation is necessary to determine to what extent Navitas KY has incorrectly assessed GCR amounts. Furthermore, the Commission finds that Navitas KY should be required to show cause why it should not be sanctioned pursuant to KRS 278.990 for violating KRS 278.030, KRS 278.180(1), KRS 278.274 the Commission orders referenced herein, its GCR tariff, and for any other violations discovered in this investigation. The Commission further finds that a procedural schedule should be established to ensure the orderly processing of this case.

IT IS THEREFORE ORDERED that:

1. This case is opened to investigate the alleged failure of Navitas KY to comply with KRS 278.030, KRS 278.180(1), the Commission orders referenced herein, its GCR tariff, and for any other violations discovered in this investigation.
2. Within 20 days of the date of service of this Order, Navitas KY shall submit to the Commission a written response to each allegation in this Order.
3. The procedural schedule set forth in Appendix to this Order shall be followed. The procedural schedule shall be amended as necessary to accommodate any intervenor testimony.
4. All documents, records, and orders included in the record of Case Nos. 2019-00430, 2020-00396, 2020-00103, 2020-00200, 2021-00136, 2021-00278, 2022-00109, 2022-00189, 2023-00002, 2023-00091, 2022-00004, 2022-00189, 2022-00331,

2023-00002, 2023-00215, 2023-00325, 2023-00428, and 2024-00184, are incorporated by reference into the record of this proceeding.

5. Any party filing a paper with the Commission shall file an electronic copy in accordance with the electronic filing procedures set forth in 807 KAR 5:001, Section 8. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked. The Commission directs the parties to the Commission's July 22, 2021 Order in Case No. 2020-00085¹³ regarding filings with the Commission.

6. As set forth in 807 KAR 5:001, Section 4(11)(a), a person requesting permissive intervention in a Commission proceeding is required to demonstrate either (1) a special interest in the proceeding that is not adequately represented in the case, or (2) that the person requesting permissive intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings. Therefore, any person requesting to intervene in a Commission proceeding must state with specificity the person's special interest that is not otherwise adequately represented, or the issues and facts that the person will present that will assist the Commission in fully considering the matter. A mere recitation of the quantity of utility service consumed by the movant or a general statement regarding a potential impact of possible modification of rates will not be deemed sufficient to establish a special interest. In addition, any motion to intervene filed after the date

¹³ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

established in the procedural schedule shall also show good cause for being untimely. If the untimely motion is granted, the movant shall accept and abide by the existing procedural schedule.

7. Navitas KY shall give notice of any scheduled hearing in accordance with the provisions set forth in 807 KAR 5:001, Section 9(2). In addition, the notice of hearing shall include the following statements: "This hearing will be streamed live and may be viewed on the PSC website, psc.ky.gov"; and "Public comments may be made at the beginning of the hearing. Those wishing to make oral public comments may do so by following the instructions listing on the PSC website, psc.ky.gov." At the time publication is requested, Navitas KY shall forward a duplicate of the notice and request to the Commission.

8. At any public hearing in this matter, neither opening statements nor summarization of direct testimonies shall be permitted.

9. Pursuant to KRS 278.360 and 807 KAR 5:001, Section 9(9), a digital video recording shall be made of the hearing.

10. The Commission does not look favorably upon motions for continuance. Accordingly, motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

11. The Commission does not look favorably upon motions to excuse witnesses from testifying at Commission hearings. Accordingly, motions to excuse a witness from testifying at a Commission hearing or from testifying in person at a Commission hearing shall be made in writing and will be granted only upon a showing of good cause.

12. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

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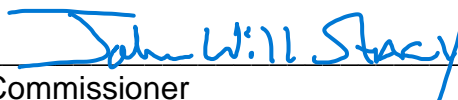
PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

ATTEST:

Executive Director

ENTERED
FEB 03 2025 AH
KENTUCKY PUBLIC
SERVICE COMMISSION

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2025-00010 DATED FEB 03 2025

- Last day for intervention requests to be accepted..... 02/24/2025
- Navitas KY shall submit to the Commission a written
response to each allegation in this Order 03/03/2025
- All initial requests for information to Navitas KY
shall be filed no later than 03/17/2025
- Navitas KY shall file responses to initial requests for
information no later than..... 03/31/2025
- All supplemental requests for information to Navitas KY
shall be filed no later than 04/14/2025
- Navitas KY shall file responses to supplemental requests
for information no later than 04/28/2025
- Last day for parties to request a public hearing or submit a
request for the matter be decided based upon the written record 05/19/2025

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