COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT ELECTRONIC APPLICATION OF NAVITAS KY NG, LLC, JOHNSON COUNTY GAS COMPANY, AND B&H GAS SYSTEM FOR APPROVAL OF ACQUISITION, TRANSFER OF OWNERSHIP, AND CONTROL OF NATURAL	))))))))))	**CASE NO. 2020-00396**

NAVITAS KY NG, LLC, JOHNSON COUNTY GAS COMPANY, AND B&H GAS SYSTEM'S RESPONSE TO COMMISSION'S FEBRUARY 1, 2021 ORDER

Navitas KY NG, LLC ("Navitas"), Johnson County Gas Company, Inc. ("JCG"), and B&H Gas Company, Inc. (B&H), by and through counsel, hereby submits the following Response to the Commission's Order entered February 1, 2021. As grounds, Navitas, B&H and JCG state as follows:

I. The Commission's February 1, 2021 Order

In its February 1, 2021 Order, the Commission requested that the Parties, "individually or jointly, shall file a written response to the condition subsequent and condition precedent to the Agreement that will be required for the Commission's approval of the transaction." Specifically, in regard to the condition subsequent, the Commission stated that it "would consider waiving all of the civil penalties assessed against B & H, Johnson County, and Bud Rife" as a condition subsequent to the proposed transaction in this proceeding "only if, the proposed transaction is actually consummated." Moreover, the Order provides in regard to the condition precedent, that the Parties "must have a plan in place to refund the amount previously ordered in Case No. 2015-00367 to B & H's customers, and potentially to Johnson County's customers as a result of Case No. 2020-00122, as a condition precedent to the Agreement and to Commission approval of the proposed transaction.[1]

II. The Condition Precedent: Proposed Plan

Pursuant to the Final Order in Case No. 2015-00367, the Commission has ordered a refund to be paid to B & H customers in the amount of $101,876. Similarly, the Commission is conducting an investigation to determine if they must Order a refund to JCG customers in Case No. 2020-00122. The condition precedent requires that the Parties submit a proposed plan that would refund the $101.876 ordered in Case No. 2015-00367, and any potential amount that may be ordered in Case No. 2020-00122.

In discussing this aspect of our proposed plan, Navitas believes it is important to note that the issues bringing about the overcharges have been resolved by the implementation of a formula for pricing natural gas commodity for non-arms-length transactions. Additionally, imbalances in customer collections in the GCA are part of the normal course of business.

A. Case No. 2015-00367

In Case No. 2015-00367, Navitas proposes the following formula to refund the B&H customers over a reasonable period of time:

$101,876 divided by 15,699 MCF divided by ten-years = $0.6489 MCF

[1] Case No. 2020-00396, *Electronic Application of Navitas KY NG, LLC, 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 February 1, 2021).

Under this plan, for a period of ten-years from the date of closing, all gas purchases from B&S Oil Company to supply the B & H system will receive a discount of $0.6489 per MCF. This discount will apply to all gas purchased by Navitas' B&H system for gas purchases from any company affiliated with Bud Rife, including B&S Gas Company, for use on the systems for the period of ten years. Additionally, should the Commission conclude at the end of the on-going investigation in Case No. 2020-00122 that the JCG system owe a refund in some amount to its customers that it must repay, then this same formula will apply to Navitas' JCG system for gas purchases from any company affiliated with Bud Rife, including Hall-Stevens-Hall, for use on the systems for the same period of ten years. The Gas Purchase Agreements submitted in the Joint Application will be amended accordingly to reflect this plan.

It is appropriate to point out that the Commission in another Order entered June 17, 2020 in Case No. 2019-00430, found that Navitas owed $235,337.66 to B&W Pipeline, and allowed Navitas to repay this amount over a period of ten years. The Commission noted that "[$235,337.66] is a large amount to be repaid by a small utility" and that it was not reasonable to overly burden Navitas KY's customers.[2] The Commission then Ordered that the $235,337.66 amount should be remitted over a period of ten-years to reduce this burden. Navitas requests that the Commission take a like-minded approach to the matter at issue here in regard to the burden that will be placed on B&S Oil Company and Hall-Stevens-Hall. B&H and JCG are nearly entirely dependent on B&S and Hall-Stevens-Hall for gas supply. It is in the best interest of all Parties and the B&H and JCG customers that the financial burden on B&S and Hall-Stevens-Hall is not so great as to cause them to be unable to provide to B&H and JCG systems a steady supply of safe and treated gas.

[2] Case No. 2019-00430, *Electronic Application Of Navitas KY NG, LLC For An Alternate Rate Adjustment* (Ky. PSC June 17, 2020).

Moreover, unlike the case involving B&W Pipeline, which involved Navitas from the beginning, the refund issues herein were not created by Navitas, but by the sellers who are parties to the proposed transaction with Navitas. It is thus reasonable to request a time frame that avoids imposing undue financial stress on Navitas if Navitas is willing to step into the shoes of the sellers to remedy a past imbalance created by other entities and individuals. Should B&S and Hall-Stevens-Hall be unable to meet the financial burdens placed on them due to a limited period of refund, Navitas has no financially tenable option to acquire gas from another source.

Accordingly, the proposed refund plan and time frame to refund customers over a ten-year period is consistent with the Commission's prior decisions and is critical to Navitas' receiving a stable gas supply and providing safe and reliable gas service to its customers.

B. Case No. 2020-00122

The same formula set forth above would apply to all gas purchased by Navitas' B&H or JCG systems from any company affiliated with Bud Rife, including B&S and Hall-Stevens-Hall, for use on the systems for the period of ten years. Customers of JCG will be refunded any imbalances due to them as part of the currently on-going investigations.

However, Navitas respectfully notes that though the Commission has requested in its Order that Navitas "have a plan in place to refund the amount. . . potentially to Johnson County's customers as a result of Case No. 2020-00122," Navitas naturally is uncomfortable assuming a "potential" obligation for an unknown or unspecified amount owed by the sellers in a proceeding that does not involve Navitas. Navitas is willing to implement the same plan proposed in 2(A) above as long as the amount of the refund found to be due and owing in Case No. 2020-00122, if found at all, does not place an undue financial strain on Navitas or its customers. Accordingly, Navitas respectfully requests that the Commission achieve resolution to its investigation into the matter prior to or by the date of the Commission's approval of this acquisition in the interest of efficiency and fairness, if possible.

III. The Condition Subsequent: Civil Penalties

In the February 1, 2021 Order, the Commission noted that it has "a certain discretion in determining whether to reverse its decision to suspend or waive all or part of the civil penalties", and further indicated that they would be amenable to considering this suspension or waiver of such civil penalties should the proposed transaction be consummated.[3] Navitas respectfully requests that the Commission waive all of the civil penalties assessed against B&H, JCG, and Bud Rife as a condition subsequent to the Agreement for the same reason described above regarding the refund issues. The penalty issues herein were not created by Navitas, but by the sellers who are parties to the proposed transaction with Navitas. It would be unjust and inconsistent with the public policy intent behind the imposition of penalties for Navitas to have to pay penalties assessed against a third party for acts or omissions committed by that party in the past. Moreover, in furtherance of the mutual goal of the Applicants and the Commission to ensure a smooth transition of ownership and control of the system and the provision of safe and reliable gas service to Kentucky customers, the Applicants respectfully request the Commission waive all of the civil penalties assessed against B&H, JCG, and Bud Rife as a condition subsequent to the Agreement.

[3] Case No. 2020-00396 at pages 3-4.

IV. Additional Proposals

A. B&H Rate Case; Forbearance on New Rate Case

It is a reasonable assumption that the rates to be determined in the on-going B&H rate case will be higher than the current JCG rates established in their last rate case in 2012. As an alternative, Navitas puts forth the option of a reduction of the B&H rates, pending approval in the current B&H rate case, to match the current JCG rates established in Case No. 2012-00140, and recognition of a single tariff for both systems going forward. Additionally, Navitas notes that the B&H rate case under Case No. 2020-00122 indicates a non-commodity revenue requirement of $225,160, whereas the JCG rates applied to B&H will only produce non-commodity revenue of $180,116. This represents a savings of approximately $45,000 per year to the B&H rate payer.

Accordingly, Navitas proposes to delay in filing a new rate case seeking to increase the current 2012 Johnson County Gas rates until the completion of test case year 2022. In 2020, JCG failed to meet the 2012 revenue requirement of $189,648 by $40,173, or in excess of 21% under-earnings. This represents a savings of approximately $40,000 per year to the JCG rate payer. With new rates anticipated for January 2024, the approximate savings of $95,000 per year benefits the rate payer by up to an estimated $238,000 in potential total tariff savings over an estimated 30-month period.

B. Transmutation of the B&H and JCG Systems from Cost of Service Systems to Net Plant Systems; Designation of a Net Plant Of $660,000

In the Applicants' initial request for relief, Request 6, Navitas asked the Commission to approve a Net Plant of $660,000, which is the amount of the purchase price under the Agreement.

Navitas now offers the following in support of this request, and additionally requests that the Commission set the amount of that Net Plant identified as land, rights-of-ways, and the remaining life for the depreciable portion.[4]

Currently, B&H Gas Company and Johnson County Gas Company are Cost of Service utilities whereby the allowed return on the systems is calculated from the cost of providing that service.[5] Conversely, return for a Net Plant utility is calculated from the investment in system assets. A utility will convert to Cost of Service as its Net Plant declines. The break point is a mathematical calculation of allowed return:

(Cost of Service/0.88 versus) – Cost of Service

Versus

Net Plant x WACC, where WACC is often approximately 9%

In the absence of a conversion provision from Net Plant to Cost of Service, older and declining systems would be required to operate without a profit margin, which is an unrealistic proposition. These systems are often in small communities where the municipality is not in a position to operate or reinvest in the system, and it is, thus, disadvantageous for them to compete with alternate forms of energy such as propane, fuel oil, wood, or electricity.

Cost of Service utilities may see further paper reductions in reinvestment as an incentive to change accounting practices. For example, Navitas has a policy of capitalizing repairs and replacements in excess of $1,000. A Cost of Service utility may earn a greater return by expensing these types of installations. Additionally, the critical importance of accounting for installations is

[4] See the Net Plant Calculations Sheet was filed in the Joint Application as Exhibit F.
[5] This may not be technically the case for B&H as the 1992 rate case currently in effect may be based on Net Plant; however, the pending rate case is filed as Cost of Service.

diminished, perhaps further reducing Net Plant. Finally, large capital reinvestments can be delayed or diminished as alternate compensation mechanisms are implemented.

In the Applicants' filing, Navitas provided some evidence for resetting Net Plant at $660,000.[6] Additional evidence to support the resetting of Net Plant to $660,000 can be found by examining the allowed and proposed returns in the JCG and B&H rate cases, respectively. A net income of $22,758 was allowed in the 2012 JCG rate case.[7] The on-going B&H rate case seeks a net income of $26,956.[8] In order to replicate the combined net income of $49,714 (assuming a 9.00% WACC ("Weighted Average Cost of Capital")), a Net Plant of at least $552,378 is required.

The need for certain reinvestment in JCG and B&H is discussed in Response 1 to the Commission Staff First Set of Data Requests. In order to avoid the extra cost and complexity of running two different types of utilities in Kentucky, it is critical that Navitas achieve a Net Plant for the combined JCG and B&H systems in excess of the currently booked amount of $223,414.

C. Navitas Amends its' Request for a Single GCA in Kentucky

In their Joint Application submission, Applicants requested that the assets acquired under the Asset Purchase Agreement have a unified GCA and unified GCA filings with Navitas KY NG, LLC. Based on the Commission's Order, Navitas proposes a modification of the relief requested in Request 7 of the Joint Application. Rather than moving to a single GCA, Navitas believes two Kentucky GCAs are more appropriate. Under this dual GCA proposal, there would be one GCA for south-central Kentucky and one GCA for eastern Kentucky. Navitas recognizes this issue is

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[6] *Joint Application*, at 8. *See also*, *Joint Application*, Exhibit F

[7] Case No. 2012-00140, *Alternative Rate Filing Adjustment Application Of Johnson County Gas Company* (Ky. PSC June 18, 2013).

[8] Case No. 2020-00364, *Electronic Application Of B & H Gas Company, Inc. For An Alternative Rate Adjustment*

complex and recommends that the issue of a unified GCA be revisited when sufficient blending of regional costs achieve less deviation between the average and the polar extremes.

V. Conclusion

WHEREFORE, Applicants request that the Commission approve the following:

1. That as a condition precedent to the approval of the Agreement, Navitas shall refund the $101,876 refund to B&H system customers over a period of ten years from the date of closing in accordance with the following formula: $101,876 divided by 15,699 MCF divided by ten-years = $0.6489 MCF;
2. That as a condition precedent to the approval of the Agreement, all gas purchases from B&S Oil Company to supply the B & H system will receive a discount of $0.6489 per MCF;
3. That as a condition precedent to the approval of the Agreement, the refund of an undetermined amount to JCG system customers be allocated over a ten-year period from the date of closing, which would include a forbearance in potential tariff earnings over an estimated 30-months, plus the certainty of formulaic pricing for the next five-years;
4. That as a condition subsequent to the approval of the Agreement, the Commission waive all of the civil penalties assessed against B&H, JCG, and Bud Rife;
5. That the Commission approve the Applicants' request to transmute the B&H and JCG systems to a Net Plant system and designate a Net Plant of $660,000;
6. That the Commission approve the amended request for two Kentucky GCA's, one for south-central Kentucky and one for eastern Kentucky, and two GCA filings following the transfer of ownership and control of the system to Navitas KY NG, LLC.

7. Granting any other necessary or appropriate authorizations, approvals and further relief as the Commission deems appropriate.

Dated this the 18 of February, 2021.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18 day of February, 2021, a true and correct copy of the foregoing instrument was deposited in the United States Mail with postage prepaid, and addressed to the following:

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