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RECEIVED

July 26, 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:

I am filing the two, attached documents from the Federal Energy Regulatory Authority ("FERC") in the above-captioned docket to supplement the information in my letter dated July 16, 2019.

The earlier letter describes, in footnote 2, the steps taken by B&W Pipeline and the FERC to notify Navitas KY of the proceeding initiated by B&W Pipeline to obtain a certificate authorizing the interstate transportation of gas from Tennessee to Kentucky and establish a rate for that transportation. See FERC Docket No. CP17-78-000.

During the same time period, Navitas KY also initiated a proceeding at the FERC to expand the company's natural gas distribution facilities across the Kentucky-Tennessee border. See FERC Docket No. CP17-171-000. Attached are two documents from the docket file: The FERC-issued "Notice of Application," publicly announcing the filing of the Navitas KY application and the "Order Determining Service Area," issued June 15, 2017, granting the company's application.

Please note that both the Notice (at p. 1) and the Order (at footnote 2) refer to B&W Pipeline's pending proceeding and the docket number of that proceeding. These references further demonstrate that Navitas KY had actual knowledge of the B&W Pipeline docket at the FERC.

There are no further updates to B&W's filing of July 16, 2019. The pipeline's invoice to Navitas KY for transportation service during May, 2019, which was calculated at the FERC-ordered rate of \$2.7172 per Mcf. remains unpaid.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS, LLP

A handwritten signature in black ink that reads "Henry Walker".

Henry Walker

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

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Navitas KY NG, LLC

Docket No. CP17-171-000

NOTICE OF APPLICATION

(April 20, 2017)

Take notice that on April 13, 2017, Navitas KY NG, LLC (Navitas), 3186D Airway Avenue, Costa Mesa, California 92626, filed an application, pursuant to section 7(f) of the Natural Gas Act (NGA),¹ requesting that the Commission make a service area determination to allow it to enlarge or expand its natural gas distribution facilities across the Kentucky/Tennessee border without further Commission authorization. Navitas also requests a determination that it qualifies as a local distribution company for purposes of section 311 of the Natural Gas Policy Act of 1978 (NGPA) and a waiver of all accounting and reporting requirements and other regulatory requirements ordinarily applicable to natural gas companies under the NGA and the NGPA, all as more fully described in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Specifically, Navitas, a Kentucky local distribution company regulated by the Kentucky Public Service Commission and providing natural gas service to approximately 125 customers in Albany, Clinton County Kentucky in the southern portion of the state adjacent to the Tennessee border, request a service area determination to operate across the Tennessee border into Pickett County Tennessee near Byrdstown in order to access a natural gas supply interconnection, the B&W Pipeline, to service its Kentucky customers. Navitas' application is related to B&W Pipeline, Inc.'s application for a limited jurisdiction blanket certificate of public convenience and necessity filed in Docket No. CP17-78-000 on March 17, 2017.

Any questions regarding this application should be directed to Thomas Hartline, Navitas Utility Corporation, 3186D Airway Avenue, Costa Mesa, CA 92626, or call (714) 242-4064, or by e-mail thartline@navitasutility.com.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental

¹ 15 USC § 717, et seq.

assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentators will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentators will not be required to serve copies of filed documents on all other parties. However, the non-party commentators will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Docket No. CP17-171-000

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The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Comment Date: 5:00 pm Eastern Time on May 11, 2017.

Kimberly D. Bose,
Secretary.

159 FERC ¶ 62,298
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Navitas KY NG, LLC

Docket No. CP17-171-000

ORDER DETERMINING SERVICE AREA

(Issued June 15, 2017)

On April 13, 2017, Navitas KY NG, LLC (Navitas-Kentucky) filed an application, pursuant to section 7(f) of the Natural Gas Act (NGA),¹ requesting that the Commission make a service area determination to allow Navitas-Kentucky to enlarge or expand its natural gas distribution facilities across the Kentucky-Tennessee border without further Commission authorization. The pipeline receives third-party-owned natural gas supply from the B&W Pipeline LLC (B&W Pipeline)² in Tennessee in order to serve customers in Albany, Kentucky. Navitas-Kentucky also requests: (1) a finding that it continues to qualify as a LDC for purposes of section 311 of the Natural Gas Policy Act of 1978 (NGPA)³; and (2) a waiver of the Commission's accounting and reporting requirements and other regulatory requirements ordinarily applicable to natural gas companies under the NGA and NGPA.

Navitas-Kentucky's requests are granted since the requested service area determination is consistent with the purpose of section 7(f) to permit a LDC to enlarge or expand its facilities to supply market requirements without further Commission approval. Further, the requested waivers are consistent with those previously granted in similar circumstances.⁴

¹ 15 USC § 717f(f) (2012).

² B&W Pipeline is a Delaware Limited Liability Company authorized to conduct business in Tennessee, and is subject to regulation by the Tennessee Public Utility Commission (TPUC).

³ 15 U.S.C. § 3301, *et seq.* (2012).

⁴ See *e.g.*, *Source Gas Distribution LLC*, 145 FERC ¶ 62,114 (2013), *Liberty Energy (Midstates) Corp.*, 138 FERC ¶ 62,320 (2012), *Piedmont Natural Gas Company, Inc.*, 136 FERC ¶ 62,037 (2011); *Minnesota Energy Resources Corporation*, 134 FERC ¶ 62,296 (2011); *Corning Natural Gas Company*, 133 FERC ¶ 62,029 (2010); and *Michigan Gas Utilities Corporation*, 117 FERC ¶ 62,045 (2006).

Background and Proposal

Navitas-Kentucky is a public utility organized and existing as a corporation under the laws of the Commonwealth of Kentucky. Navitas-Kentucky is subject to regulation by the Kentucky Public Service Commission (PSC). Navitas-Kentucky is engaged in the purchasing of natural gas for distributing and selling natural gas to approximately 125 commercial and residential customers in Albany, Clinton County, Kentucky, adjacent to the Kentucky-Tennessee border. Navitas Assets, LLC is the parent company of Navitas-Kentucky.

Navitas-Kentucky acquired its facility, known as the Albany natural gas utility system, out of bankruptcy from Gasco Distribution Systems, Inc. (Gasco) on or about January 2011. Since 2011, Navitas-Kentucky has been subject to regulation by the Kentucky PSC.

Navitas-Kentucky utilizes its facility exclusively for local distribution to Kentucky residential and commercial customers and receives third-party-owned natural gas supply from the B&W Pipeline facilities on the Tennessee side of the border near Byrdstown, Pickett County, Tennessee. Navitas-Kentucky provides natural gas service to approximately 125 Kentucky customers from the B&W Pipeline interconnection, it serves no customer in Tennessee. Navitas-Kentucky states that it is not interconnected to any interstate pipelines.

In the course of performing corporate due diligence, B&W Pipeline learned that it needs certificate authorization under section 7 of the NGA to transport the gas that it is delivering to Navitas-Kentucky, and that Navitas-Kentucky needs a designated section 7(f) service area including the receipt point in Tennessee where Navitas-Kentucky receives the gas for its direct sales of natural gas to its local distribution customers in Kentucky.⁵

⁵ On March 17, 2017, in Docket No. CP17-78-000, B&W Pipeline requested a blanket certificate under section 7 of the NGA and section 284.224 of the regulations to authorize its transportation of gas that leaves Tennessee. An order on that filing is being issued contemporaneously with this order. To the extent B&W Pipeline's sales for resale to Navitas-Kentucky are still jurisdictional under the NGA and require NGA section 7 certificate authorization, the sales for resale are covered under the blanket marketing certificate granted by section 248.402 of the regulations, 18 C.F.R. § 284.402 (2013). *See, e.g., City of Clarksville, Tennessee*, 155 FERC ¶ 61,184, at P 20 and n. 38 (2016). *See also Shell U.S. Gas & Power, LLC*, 148 FERC ¶ 61,163, at P 36 (2014) (explaining that following the legislative decontrol of prices for most gas sales, the Commission determined there was no longer a need to exercise its jurisdiction over sales other than those by interstate pipelines and therefore adopted section 284.402 of the

In this application, Navitas-Kentucky seeks a service area determination that encompasses its entire Kentucky LDC-certificated service area, including a very small geographic area in Pickett County, Tennessee where the B&W Pipeline interconnection is located.

Navitas-Kentucky states that its facilities in Kentucky will continue to operate as it has been for decades. Navitas-Kentucky states that it does not anticipate any changes in its operations as a result of this service area determination. Navitas-Kentucky asserts that it will continue to operate as usual and be subjected to the same state and local regulatory oversight after it receives the requested service area determination

Interventions

Navitas-Kentucky's application was noticed by publication in the *Federal Register* on April 27, 2017 (82 Fed. Reg. 19,366), with comments, protests, and interventions due on or before May 11, 2017. No protests, motions to intervene, or adverse comments were filed.

Findings

Section 7(f)(1) of the NGA provides:

The Commission, after a hearing had upon its own motion or upon application, may determine the service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or expand its facilities for the purpose of supplying increased market demands in such service area without further authorization.⁶

The Commission has consistently recognized that section 7(f) service area determinations are appropriate for companies primarily engaged in the business of local distribution of natural gas, but whose facilities cross state lines for certain geographical reasons.⁷ Factors considered in determining whether a company qualifies for a service

regulations to provide for the automatic issuance of section 7 blanket marketing certificates to authorize any persons who are not interstate pipelines to make sales for resale of gas remaining subject to section 7 jurisdiction and to charge negotiated rates).

⁶ 15 U.S.C. §717f(f)(1) (2012).

⁷ See, e.g., *Piedmont Natural Gas Company, Inc.*, 136 FERC ¶ 62,037 at 64,085 (2011); *Atmos Energy Corporation*, 127 FERC ¶ 62,139 at 64,391 (2009); *Avista Corporation*, 126 FERC ¶ 62,138 at 64,326 (2009); *City of Toccoa, Georgia*, 125 FERC

area determination are whether:

- (1) state or local agencies regulate the company's rates;
- (2) the company has an extensive transmission system;
- (3) authorizing the service area will have a significant effect on neighboring distribution companies; and
- (4) the company makes sales of natural gas for resale.

In regards to the first factor, the Kentucky PSC regulates Navitas-Kentucky's retail rates and services. Second, Navitas-Kentucky's distribution system is located in Kentucky and is used exclusively for local distribution. Third, Navitas-Kentucky's requested authorization will have no effect on any other LDC in Tennessee or Kentucky or their customers. Navitas-Kentucky's proposed service area is comprised of its existing Kentucky PSC approved service territory in Kentucky. Finally, Navitas-Kentucky does not anticipate making sales for resale within its service area. Navitas-Kentucky only seeks to receive gas supplies from the B&W Pipeline facilities on the Tennessee side of the state border for its retail Kentucky requirements. Navitas-Kentucky's primary business within its Kentucky service area will be as a natural gas distributor and retail seller of natural gas.

No environmental impact would be involved with the approval of this proposal because no construction is being approved and the facilities at issue have already been placed into operation. Accordingly, no environmental assessment was prepared.

For the reasons stated above, approval of Navitas-Kentucky's request for a section 7(f) service area determination is granted as requested. The service area determination will relieve Navitas-Kentucky of Commission regulations otherwise applicable to the enlargement or extension of its facilities within the service area and the transportation of gas in interstate commerce within the service area.

Navitas-Kentucky requests to be treated as an LDC for the purposes of section 311 of the NGPA and the Commission has previously held that section 7(f) companies should be treated as such.⁸ Although Navitas-Kentucky will own pipeline facilities that cross the Kentucky-Tennessee border, it will operate as an LDC within its service area.

Navitas-Kentucky also requests a waiver of the Commission's accounting and reporting requirements and other regulatory requirements ordinarily applicable to natural gas companies under the NGA and NGPA. The requested waivers are consistent with

¶ 61,048 at P 4 (2008).

⁸ See, e.g., *City of Clarksville, Tennessee*, 146 FERC ¶ 61,074, at P 22.

those previously granted in similar circumstances and are granted in this proceeding.⁹ No regulatory gap will exist because Navitas-Kentucky will remain subject to the accounting, reporting, and other rules and regulations of the Kentucky PSC. There is no need to duplicate on the federal level requirements already imposed on Navitas-Kentucky by the state regulatory agencies.

Pursuant to 18 CFR 375.308, it is ordered that:

(A) Navitas-Kentucky is granted a service area determination under section 7(f) of the NGA, as described herein and more fully in the application.

(B) Navitas-Kentucky is determined to be an LDC for purposes of section 311 of the NGPA.

(C) Navitas-Kentucky is granted a waiver of reporting and accounting requirements, as well as other rules and regulations under the NGA and NGPA that are ordinarily applicable to natural gas companies.

(D) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order pursuant to 18 C.F.R. § 385.713.

Pamela J. Boudreau
Acting Director
Division of Pipeline Certificates
Office of Energy Projects

⁹ See, e.g., *id.* at P 23; *City of Toccoa*, 125 FERC ¶ 61,048 (2008); and *Kinder Morgan Interstate Gas Transmission LLC*, 94 FERC ¶ 61,078 (2001).