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615.252.2363 direct

Bradley
RECEIVED

November 8, 2019

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PUBLIC SERVICE
COMMISSION

Gwen R. Pinson, Esq., Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

In Re: Purchased Gas Adjustment Filing of Navitas KY NG, LLC
Case No. 2019-00372

Dear Ms. Pinson:

The October 18, 2019 response of Navitas KY to the Commission Staff's first request for information in the above-captioned docket states that "there may still be an interpretation dispute" as to whether Navitas KY is required to pay transportation charges on gas that is purchased by Navitas KY from Sparta Energy (a corporate affiliate of B&W Pipeline), and shipped via B&W's facilities to Navitas KY for consumption by Kentucky customers.

Although the GCR reports filed by Navitas KY have in the past always included those transportation charges, the most recent GCR report filed October 3, 2019 does not include any transportation charges for gas purchased from Sparta Energy and therefore understates Navitas KY's gas transportation costs.

Attached for your information is a recent letter to Mr. Thomas Hartline from me explaining why Navitas KY will be charged the interstate rate for gas purchased by Navitas KY from Sparta Energy and shipped via B&W's facilities to Kentucky.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS, LLP


Henry Walker

Attachment

207335-301001
4840-9656-9260.1



Henry Walker
Direct: 615.252.2363
Fax: 615.252.6363
hwalker@babc.com

November 8, 2019

Mr. Thomas Hartline
NAVITAS COMPANIES
3186-D Airway Avenue
Costa Mesa, CA 92626

Re: B&W Pipeline Invoices

Dear Mr. Hartline:

I am writing in response to your email of November 5, 2019 copied to Juan Duran in which you raise three objections to paying B&W Pipeline's last invoice.

1. You state that in order for B&W Pipeline to charge the interstate rate set by the FERC for the months prior to February, 2019, B&W must "file for recovery with the Kentucky Public Service Commission."

The FERC order made the new rate of \$2.7172 per Mcf effective July 17, 2017. Under federal law, that is the rate B&W Pipeline must collect from Navitas KY less the pro rata portion of the monthly charge of \$13,897.67 already paid.

The Kentucky Commission has no jurisdiction over interstate transportation or over B&W Pipeline which is wholly located in Tennessee. There is no requirement that B&W seek the approval of the Kentucky Commission in order to bill and collect the FERC rate.

If Navitas KY is unable to pay the arrearage owed under the FERC order, you may, of course, ask the Kentucky Commission to impose a customer surcharge that will allow Navitas KY to pay the arrearage over time without unduly burdening your Kentucky customers. B&W Pipeline has repeatedly offered to negotiate a reasonable payment schedule. You have yet to respond to their offer. In any event, it is the responsibility of Navitas KY, not B&W Pipeline, to request the imposition of a customer surcharge if one is needed in order for Navitas KY to pay the arrearage.

2. You state that Navitas KY should be billed at the FERC rate for gas "delivered from Spectra East Tennessee Pipeline as ordered by FERC." Your statement implies that Navitas KY will not pay B&W Pipeline the FERC rate for transporting gas that is purchased by Navitas KY from Sparta Energy (a corporate affiliate of B&W Pipeline), delivered by Sparta to B&W Pipeline and transported by B&W to Navitas KY for consumption in Kentucky.¹

¹ In testimony filed with the Tennessee Commission in Docket 19-00084, you stated (at 6) that Navitas contends that "the FERC clarification [the order of September 4, 2019 denying Navitas' petition for reconsideration] is that only gas deliveries from the East Tennessee Pipeline are tariffed to Navitas at \$2.7172 . . ." Similarly, you told the Kentucky Commission on October 18, 2019 in response to a Staff data request, "However, note that there may still be an interpretation dispute between Navitas and B&W Pipeline. This dispute stems from a clarification issued by

Mr. Thomas Hartline
November 8, 2019
Page 2

Your argument that the FERC rate applies only to gas delivered to B&W from Spectra and not to gas delivered from Sparta Energy is untenable. Under the terms of the letter that Sparta Energy sends to Navitas each month offering to sell gas to Navitas, Sparta Energy states, “Sparta Energy, LLC hereby presents the following proposal to supply nature gas to the B&W pipeline.” Emphasis added. (A copy of a recent letter is attached.) Sparta Energy delivers the gas to the B&W Pipeline. Navitas takes title to the gas at that point. From there, it is the responsibility of Navitas KY, not Sparta Energy, to pay for the transportation of the gas to the Navitas KY meter.²

You state that Navitas should be billed at the FERC rate for gas delivered from Spectra “as ordered by FERC,” but there is nothing in any FERC order to support your argument. For easy reference, I have attached a copy of the FERC order upon which you are relying. In denying the petition for reconsideration filed by Navitas KY, the FERC wrote, “Navitas is only subject to B&W’s SOC to the extent it wishes to ship natural gas in interstate commerce via B&W’s facilities.” You are therefore subject to B&W’s interstate tariff whenever you ship gas over B&W’s facilities “in interstate commerce.” Any gas shipped to Navitas KY and consumed in Kentucky, whether it is purchased from a producer and delivered to B&W through Spectra or whether it is purchased from Sparta Energy and delivered by Sparta Energy directly to B&W Pipeline, is gas “in interstate commerce.” As the Tennessee Commission explained in its final order in Docket 15-00042, B&W “both receives and delivers natural gas within the borders of [Tennessee], however, the record reflects that a large portion of the gas B&W delivers is ultimately consumed beyond Tennessee’s borders.” Order at 5. Therefore, the Commission concluded that B&W is transporting gas in interstate commerce and must obtain an interstate certificate from the FERC. *Id.*, at 5-6. In other words, gas that is shipped via B&W’s facilities in Tennessee and ultimately consumed in Kentucky is gas “in interstate commerce.” It does not matter whether the gas is delivered to B&W by Spectra or by Sparta Energy. Because it is gas “in interstate commerce,” the FERC rate applies.

Furthermore, as you know, Navitas has never disputed that Navitas is responsible for paying B&W’s transportation charges for gas purchased from Sparta Energy or its predecessor FWM Energy. For years, you have allocated those transportation charges between Tennessee and Kentucky and recovered them from your customers in each state. Nothing has happened that explains why Navitas KY has now decided not to pay for the transportation of gas purchased from Sparta Energy. You say that this change has been “ordered by the FERC” but there is nothing ambiguous about the FERC order denying your petition to reconsider and certainly nothing in the order that implies that Navitas KY is no longer required to pay for the transportation of gas purchased from Sparta Energy.

FERC whereby Navitas believes that the tariff only applies to gas owned by Navitas and input into the B&W pipeline and not for gas produced by B&W’s affiliate.”

² As B&W Pipeline’s federal tariff states, “Shipper and Transporter specifically understand and acknowledge that title to all Gas transported hereunder shall never vest in Transporter. . . . Title and/or rights to all Gas delivered by Shipper to Transporter for transportation hereunder will remain with Shipper during transport by Transporter.” Statement of Operation Conditions, Sections 6.13 and 6.14.

Mr. Thomas Hartline
November 8, 2019
Page 3

Finally, Sparta Energy sells gas to Navitas for about \$3.00 per Mcf which is somewhat less than the current market rate for natural gas delivered to B&W by Spectra. Navitas KY must then pay B&W Pipeline \$2.7172 per Mcf to transport the gas to the Navitas KY meter. If, as you now contend, the sale price paid to Sparta Energy of \$3.00 per Mcf includes B&W's \$2.7172 per Mcf transportation charge, that would mean that Sparta Energy is selling natural gas to Navitas KY for an effective price of only \$0.30 per Mcf. That is a nonsensical interpretation of the terms of your purchase and obviously not what the offer states or the parties intend.

3. You say that you need an order from the Tennessee Commission "to determine how and when the billing should be adjusted."

On November 5, 2019, B&W amended its Tennessee rate to eliminate the flat rate charge and volumetric charge set in 2016 and to substitute instead a volumetric rate of \$1.23248 per Mcf that is applicable to gas consumed in Tennessee. This amendment reflects the Commission's oral decision and vote on October 14, 2019. The agency directed that the revised rate take effect that day. Although the Commission has not yet issued a written order explaining their oral decision, the agency sent a letter to B&W yesterday accepting the revised tariff and stating that the tariff accurately reflects the Commission's decision and is effective as of October 14, 2019. Copies of the revised tariff and the Commission's letter are attached. You are therefore obliged to pay the tariffed rate even though a written order has not yet been released.

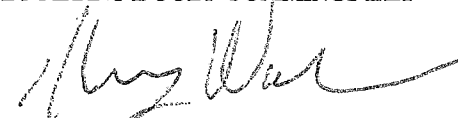
For these reasons, we reject your three objections to the bill and expect prompt payment.

Mr. Hartline, it is past time for Navitas to begin paying its invoices. You owe \$2.7172 per Mcf on gas consumed in Kentucky, effective July 17, 2017, and \$1.23248 per Mcf on gas consumed in Tennessee, effective October 14, 2019. At this time, you have paid nothing, neither the FERC rate nor the Tennessee flat and volumetric rates, for gas transportation in August and September. Unless you begin paying the tariffed rates and make arrangement to pay the interstate (and now also the intrastate) arrearage, B&W Pipeline will send you a demand letter and, if you still refuse to pay, pursue the remedies provided under B&W's federal and Tennessee tariffs. Those remedies include the right to file a collection action – and charge Navitas for the costs of the litigation, including attorney's fees – and the right to suspend gas transportation service until payment is made. To avoid those consequences, please contact Mr. Juan Duran at B&W to discuss payment arrangements.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS LLP

By:



Henry Walker

HW/dbi
Attachments
cc: Don Baltimore

Henry Walker
Direct: 615.252.2383
Fax: 615.252.8363
hwalker@babe.com

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2019 NOV 11 11:38
T.P.U. DOCKET ROOM
Bradley

November 4, 2019

VIA HAND DELIVERY

Mr. David N. Foster
Chief, Utilities Division
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243

20190066

In Re: Tariff filing of B&W Pipeline, LLC
Docket No. 15-00042 & 19-00084

David
Dear Mr. Foster:

Please accept the attached tariff filing for B&W Pipeline. As directed by the Commission on October 14, 2019, the tariff eliminates the flat and usage charges established in Docket 15-00042 and substitutes a volumetric rate of \$1.23248 per Mcf applicable to gas that is transported via B&W's facilities and consumed in Tennessee. The tariff is effective October 14, 2019 as ordered by the Commission.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS LLP

By: 
Henry Walker

HW/dbi
Attachment
cc: Hal Novak
Don Baltimore
Daniel Whitaker

207335--301001
4819-4820-8300.1

RATE SCHEDULE T-1
Transportation Service

AVAILABILITY

Transportation Service shall be subject to the following terms:

1. Service under this tariff will be determined based upon capacity availability as assessed by B&W Pipeline (Company). This capacity assessment may result in the decision to not service additional customers when their potential capacity demand may, at the Company's judgment, adversely affect the Company's ability to provide service to its existing customers.
2. Customer must be on or adjacent to the Company's existing mains and the mains shall, in the Company's judgment, be adequate to service the Customer's requirements without impairing service to other customers.
3. To ensure measurement integrity, each delivery point will constitute an indivisible measurement reading attributable to a single customer.

RATE

Volumetric Charge	\$1.23248 per Mcf
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PAYMENT TERMS

All bills for service are due upon presentation. The stated amount shown on the bill shall apply if payment is received on or before the date as specified on the bill. Payments received after that date shall include a late payment penalty of five percent (5%) per month.



SPARTA ENERGY

September 26th, 2019

Navitas Utilities Corporation.

Mr. Thomas Hartline, President.

3186 Airway Ave,

Costa Mesa, CA 92626

RE: Proposal to supply natural gas to Navitas – October 2019

Dear Mr. Hartline:

Sparta Energy, LLC hereby presents the following proposal to supply natural gas to the B&W gas pipeline:

For the time period from October the 1st till the 31st, 2019:

a.- Supply 4,500 MCF each month during the aforementioned period at a rate of \$3.02/MCF.

It is our dearest interest that Navitas' customers get the best pricing for their gas. As you might know, Sparta Energy, LLC produces its natural gas in Fentress, Morgan and Scott Co (TN). Selling this locally produced gas generates jobs, wealth and stability close to the home of your clients. Please also take into account that by purchasing directly from the producer Navitas will not incur the transportation costs charged by Spectra. For further ratification, just as in all past transactions, this price is exclusive of any B&W Pipeline transportation costs and it will be sold to Navitas at the B&W entry point.

As an additional proof of our commitment, should Navitas receive a better offer than the one presented in this document, for gas delivered at the Spectra-Morgan #3 gas station, we will improve that offer with a 3% discount, thus providing the lowest price for gas to Navitas' customers thanks to the price improvement offered.

As every month, if we do not receive any reply from Navitas declining our offer at least one day prior to the end of the current month, we will keep the current status and continue to supply Navitas with our gas.

Sincerely,

Juan J. Duran
Controller, for Sparta Energy, LLC

9534 Morgan County Hwy
Sunbright, TN 37872
Telephone: 865-240-0167
Fax: 931-443-0300

168 FERC ¶ 61,143
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

B&W Pipeline, LLC

Docket No. PR17-54-002

ORDER DISMISSING REQUEST FOR REHEARING

(Issued September 4, 2019)

1. On August 9, 2019, Navitas KY NG, LLC (Navitas) filed a request for rehearing of a July 11, 2019 delegated order¹ that accepted B&W Pipeline, LLC's (B&W) unopposed Statement of Operating Conditions (SOC), which was identical to the *pro forma* SOC filed as part of the unopposed Stipulation and Agreement (Settlement) that the Commission approved on May 17, 2019.² We dismiss the request for rehearing as procedurally barred, but *sua sponte* clarify the underlying orders.

2. The underlying orders in this proceeding were issued pursuant to the Natural Gas Policy Act of 1978 (NGPA). NPGA § 506(a)(2) only allows the Commission to consider requests for rehearing from persons who are already party to the proceeding.³ Rule 713(b) of the Commission's regulations contains the same limitation.⁴ Any person seeking to intervene to become a party must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure.⁵ At no point during the

¹ *B&W Pipeline, LLC*, Docket No. PR17-54-001 (July 11, 2019) (delegated order).

² *B&W Pipeline, LLC*, Docket No. PR17-54-000 (May 17, 2019) (delegated order).

³ 15 USC 3416 (a)(2) (2012).

⁴ 18 C.F.R. § 385.713(b) (2019).

⁵ 18 C.F.R. § 385.214(a)(3).

Docket No. PR17-54-002

- 2 -

two years that this docket was open – during which time the Commission issued three notices inviting interventions⁶ – did Navitas seek to intervene.

3. Navitas' request for rehearing does present one misapprehension of law that warrants a *sua sponte* clarification. Navitas argues that by accepting B&W's filing, the Commission "effectively removes Navitas' [Local Distribution Company] status," under section 7(f) of the Natural Gas Act, "and subjects Navitas to FERC regulation and a FERC-imposed rate scheme obtained by a third party (B&W Pipeline, LLC)."⁷ This is incorrect. A Statement of Operating Conditions regulates the pipeline, not the shipper. Navitas is only subject to B&W's SOC to the extent that it wishes to ship natural gas in interstate commerce via B&W's facilities. Entities that have Local Distribution Company status under section 7(f) of the Natural Gas Act do not risk their section 7(f) status by becoming shippers, nor do they risk their section 7(f) status by any action that the Commission may take towards an unrelated pipeline's settlement filings.

The Commission orders:

The request for rehearing is dismissed.

By the Commission.

(SEAL)

Kimberly D. Bose,
Secretary.

⁶ Docket No. PR17-54-000, Combined Notice of Filings, July 19, 2017 and Combined Notice of Filings, March 27, 2019. Docket No. PR17-54-001, Combined Notice of Filings, June 11, 2019.

⁷ Request for Rehearing at 3.