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NOV 27 2019

PUBLIC SERVICE
COMMISSION

Navitas Utility Corporation
3186D Airway Avenue
Costa Mesa, CA 92626
Phone: 714.242.4064
bbott@navitasutility.com

November 25, 2019

VIA UPS DELIVERY

Gwen Pinson
Executive Director
Kentucky Public Service Commission
211 Sower Blvd
Frankfort, KY 40601

RE: Navitas KY NG, LLC – Application for Alternate Rate Adjustment

Dear Executive Director Pinson,

Enclosed for filing please find an original and five copies of an Application for Alternative Rate Adjustment, AR Form-1, and AR Form-3 pursuant to 807 KAR 5:076. The Application in this form stems from a recent phone conference with Commission Staff regarding the implementation of a surcharge on Navitas' Kentucky customers in order to comply with a May 17, 2019 Federal Energy Regulatory Commission Order on behalf of B&W Pipeline, LLC, a Tennessee company. This is not a rate case, but an effort to seek a surcharge or small rate adjustment to comply with the FERC Order regarding an outstanding arrearage amount. Several of the document requests pursuant to 807 KAR 5:076 are not applicable to this particular Application and are noted as such in the accompanying AF Form-1.

A copy of the enclosed submission has been mailed to Larry Cook, Office of the Attorney General, Rate intervention, 700 Capitol Avenue, STE 20, Frankfort, Kentucky 40601.

If there are any questions or concerns regarding this submission, please notify either Brenda Bott of Navitas KY NG, LLC at bbott@navitasutility.com or undersigned counsel. Thank you.

Yours truly,



Klint Alexander
Counsel for Navitas KY NG, LLC
Tel: (615) 594-4377
Klint.alexander10@gmail.com

SUBMIT ORIGINAL AND FIVE ADDITIONAL COPIES, UNLESS FILING ELECTRONICALLY

**APPLICATION FOR RATE ADJUSTMENT
BEFORE THE PUBLIC SERVICE COMMISSION**

For Small Utilities Pursuant to 807 KAR 5:076
(Alternative Rate Filing)

RECEIVE

NOV 27 2019

PUBLIC SERVICE
COMMISSION

NAVITAS KYNG, LLC
(Name of Utility)

3186 D AIRWAY AVE
(Business Mailing Address - Number and Street, or P.O. Box)

COSTA MESA, CA 92626
(Business Mailing Address - City, State, and Zip)

714 242-4064
(Telephone Number)

BASIC INFORMATION

NAME, TITLE, ADDRESS, TELEPHONE NUMBER and E-MAIL ADDRESS of the person to whom correspondence or communications concerning this application should be directed:

THOMAS HORTLINE
(Name)

(Address - Number and Street or P.O. Box)

(Address - City, State, Zip)

(Telephone Number)

THORTLINE@NAVITASUTILITY.COM
(Email Address)

(For each statement below, the Applicant should check either "YES", "NO", or "NOT APPLICABLE" (N/A))

- | | YES | NO | N/A |
|---|-------------------------------------|-------------------------------------|--------------------------|
| 1. a. In its immediate past calendar year of operation, Applicant had \$5,000,000 or less in gross annual revenue. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Applicant operates two or more divisions that provide different types of utility service. In its immediate past calendar year of operation, Applicant had \$5,000,000 or less in gross annual revenue from the division for which a rate adjustment is sought. | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. a. Applicant has filed an annual report with the Public Service Commission for the past year. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Applicant has filed an annual report with the Public Service Commission for the two previous years. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Applicant's records are kept separate from other commonly-owned enterprises. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

YES NO N/A

4. a. Applicant is a corporation that is organized under the laws of the state of KENTUCKY, is authorized to operate in, and is in good standing in the state of Kentucky.
- b. Applicant is a limited liability company that is organized under the laws of the state of KENTUCKY, is authorized to operate in, and is in good standing in the state of Kentucky.
- c. Applicant is a limited partnership that is organized under the laws of the state of _____, is authorized to operate in, and is in good standing in the state of Kentucky.
- d. Applicant is a sole proprietorship or partnership
- e. Applicant is a water district organized pursuant to KRS Chapter 74.
- f. Applicant is a water association organized pursuant to KRS Chapter 273.
5. a. A paper copy of this application has been mailed to Office of Rate Intervention, Office of Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601-8204.
- b. An electronic copy of this application has been electronically mailed to Office of Rate Intervention, Office of Attorney General at rateintervention@ag.ky.gov.
6. a. Applicant has 20 or fewer customers and has mailed written notice of the proposed rate adjustment to each of its customers no later than the date this application was filed with the Public Service Commission. A copy of this notice is attached to this application. (Attach a copy of customer notice.)
- b. Applicant has more than 20 customers and has included written notice of the proposed rate adjustment with customer bills that were mailed by the date on which the application was filed. A copy of this notice is attached to this application. (Attach a copy of customer notice.) DEC. 7TH
- c. Applicant has more than 20 customers and has made arrangements to publish notice once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in its service area, the first publication having been made by the date on which this Application was filed. A copy of this notice is attached to this application. (Attach a copy of customer notice.)
7. Applicant requires a rate adjustment for the reasons set forth in the attachment entitled "Reasons for Application." (Attach completed "Reasons for Application" Attachment.)


YES NO N/A

8. Applicant proposes to charge the rates that are set forth in the attachment entitled "Current and Proposed Rates." (Attach completed "Current and Proposed Rates" Attachment.)
9. Applicant proposes to use its annual report for the immediate past year as the test period to determine the reasonableness of its proposed rates. This annual report is for the 12 months ending December 31, _____
10. Applicant has reason to believe that some of the revenue and expense items set forth in its most recent annual report have or will change and proposes to adjust the test period amount of these items to reflect these changes. A statement of the test period amount, expected changes, and reasons for each expected change is set forth in the attachment "Statement of Adjusted Operations." (Attach a completed copy of appropriate "Statement of Adjusted Operations" Attachment and any invoices, letters, contracts, receipts or other documents that support the expected change in costs.)
11. Based upon test period operations, and considering any known and measurable adjustments, Applicant requires additional revenues of \$ 230,000 and total revenues from service rates of \$ 0.30. The manner in which these amounts were calculated is set forth in "Revenue Requirement Calculation" Attachment. (Attach a completed "Revenue Requirement Calculation" Attachment.)
12. As of the date of the filing of this application, Applicant had 127 customers.
13. A billing analysis of Applicant's current and proposed rates is attached to this application. (Attach a completed "Billing Analysis" Attachment.)
14. Applicant's depreciation schedule of utility plant in service is attached. (Attach a schedule that shows per account group: the asset's original cost, accumulated depreciation balance as of the end of the test period, the useful lives assigned to each asset and resulting depreciation expense.)
15. a. Applicant has outstanding evidences of indebtedness, such as mortgage agreements, promissory notes, or bonds.
- b. Applicant has attached to this application a copy of each outstanding evidence of indebtedness (e.g., mortgage agreement, promissory note, bond resolution).
- c. Applicant has attached an amortization schedule for each outstanding evidence of indebtedness.

- | | YES | NO | N/A |
|---|-------------------------------------|--------------------------|-------------------------------------|
| 16. a. Applicant is not required to file state and federal tax returns. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b. Applicant is required to file state and federal tax returns. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c. Applicant's most recent state and federal tax returns are attached to this Application. (Attach a copy of returns.) | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 17. Approximately _____ (Insert dollar amount or percentage of total utility plant) of Applicant's total utility plant was recovered through the sale of real estate lots or other contributions. | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 18. Applicant has attached a completed Statement of Disclosure of Related Party Transactions for each person who 807 KAR5:076, §4(h) requires to complete such form. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

By submitting this application, the Applicant consents to the procedures set forth in 807 KAR 5:076 and waives any right to place its proposed rates into effect earlier than six months from the date on which the application is accepted by the Public Service Commission for filing.

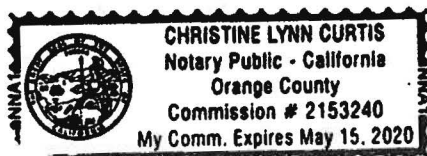
I am authorized by the Applicant to sign and file this application on the Applicant's behalf, have read and completed this application, and to the best of my knowledge all the information contained in this application and its attachments is true and correct.


Signed 
Officer of the Company/Authorized Representative
 Title RESIDENT
 Date 11-20-19

COMMONWEALTH OF KENTUCKY

COUNTY OF Orange, CA

Before me appeared Thomas Hartline, who after being duly sworn, stated that he/she had read and completed this application, that he/she is authorized to sign and file this application on behalf of the Applicant, and that to the best of his/her knowledge all the information contained in this application and its attachments is true and correct.




 Notary Public
 My commission expires: May 15, 2020

LIST OF ATTACHMENTS
(Indicate all documents submitted by checking box)

Customer Notice of Proposed Rate Adjustment

"Reasons for Application" Attachment

"Current and Proposed Rates" Attachment

~~Statement of Adjusted Operations" Attachment~~

"Revenue Requirements Calculation" Attachment (*see Application*)

~~Attachment Billing Analysis" Attachment~~

~~Depreciation Schedules~~

~~Outstanding Debt Instruments (i.e., Bond Resolutions, Mortgages, Promissory Notes, Amortization Schedules.)~~

~~State Tax Return~~

~~Federal Tax Return~~

Statement of Disclosure of Related Party Transactions - ARF Form 3

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

**NAVITAS KY NG, LLC'S APPLICATION FOR) CASE NO. 2019-00430
ALTERNATIVE RATE ADJUSTMENT)**

APPLICATION

COMES NOW Navitas KY NG, LLC ("Navitas"), by and through undersigned counsel, and hereby submits this Application for an Alternative Rate Adjustment pursuant to 807 KAR 5:076 *et seq.*, requesting an adjustment of rate in response to the Federal Energy Regulatory Commission's (FERC) Order dated May 17, 2019 authorizing the retroactive collection of tariff monies for the interstate transportation of natural gas to the Kentucky customers of Navitas via B&W, LLC's Tennessee pipeline.

In support of this Application, Navitas would show unto the Commission as follows:

1. Navitas KY NG, LLC (hereinafter referred to as "Navitas") is a Kentucky limited liability company with its principal place of business located at 3186-D Airway Avenue, Costa Mesa, California 92626. Navitas is in the business of distributing and selling natural gas to residential, agricultural and industrial customers in Albany, Clinton County, Kentucky. At present, Navitas has approximately 127 monthly customers in Kentucky. These customers of Navitas receive natural gas through the Spectra East Tennessee Pipeline in Tennessee and through production affiliated with the B&W Pipeline. Navitas' utility operations and its rates, services, practices and charges in connection therewith are subject to general regulation by the Commission.

2. The Commission has jurisdiction over this matter pursuant to KRS 278.010 *et seq.*, 807 KAR 5:076 *et seq.*

3. In February 2011, the Commission entered an Order approving the transfer of control and authority of Gasco Distribution Systems, Inc.'s gas utility system to Navitas, including the authority to provide utility services deriving from its Certificate of Public Convenience and Necessity, in Albany, Clinton County, Kentucky.

4. B&W Pipeline, LLC ("B&W") is a public utility that owns fifty miles of pipeline located entirely within Tennessee and regulated by the Tennessee Public Utility Commission ("TPUC"). B&W currently supplies transportation services of natural gas to Navitas. Natural gas owned by Navitas must pass from the Spectra East Tennessee Pipeline and flow through the B&W Pipeline before it is distributed and sold to Navitas' residential, agricultural and industrial customers in Tennessee and Albany, Clinton County, Kentucky.

Background to Present Application

5. On April 2, 2015, B&W filed a general rate case in TPUC Docket No. 15-00042. Two parties requested to intervene in that Docket: The Tennessee Consumer Advocate and Navitas TNNG, LLC, another natural gas utility regulated by TPUC that is the only customer of B&W.

6. A Hearing on the merits was held before TPUC on September 14, 2015. During the Hearing, and for the first time in the proceeding, testimony from the parties and responses to questions by the [TPUC] Staff indicated that a portion of the gas B&W delivered to Navitas is ultimately consumed in Kentucky. As a result, a question arose as to whether B&W qualifies for "Hinshaw" status.

7. The Parties filed post-hearing briefs on the issue of "Hinshaw" status, and while the Parties averred that B&W did not qualify for such treatment, the Consumer Advocate and B&W agreed that TPUC could nonetheless "assert jurisdiction as to rates charged for the gas

delivered and ultimately consumed in Tennessee pending FERC's consideration of [a] blanket certificate pursuant to 18 C.F.R. § 284.224.¹

8. On March 10, 2016, TPUC entered a *Final Order Setting Rates*. A true and exact copy of the March 10, 2016 TPUC Order is affixed hereto as **Exhibit A**. TPUC ruled:

Therefore, the panel concludes that as B&W is not a Hinshaw pipeline, the Company must address its status with FERC, specifically by applying for an Order No. 63 certificate exemption pursuant to 18 C.F.R. § 284.224.22. A FERC Order 63 certificate would allow B&W to acquire Hinshaw-like status with FERC and thus authorize the TRA to set rates for all of the gas delivered by B&W to Navitas, including for those volumes consumed by customers in Kentucky. ***As part of the application for a blanket certificate, B&W shall utilize this Order and the rate established herein for FERC for review.***² (Emphasis added)

9. In the Final Order, TPUC issued a directive for steps B&W needed to take, ordering the following:

- A rate design consisting of a fixed monthly charge of \$13,897 from Navitas TNNG, LLC resulting in revenues of \$210,624. In addition, the [TPUC] set a volumetric charge of \$0.30813 per Mcf from all customers.
- B&W Pipeline, LLC shall provide a copy of his Order to the Federal Energy Regulatory Commission in the Company's application for a blanket certificate pursuant to 18 C.F.R. § 284.224.³

10. Under TPUC's directive, B&W was to file for a blanket certificate from FERC, provide FERC with TPUC's Order and the rates established therein for FERC's review, and after receiving approval from FERC, operate in accordance with TPUC's decision in TPUC Docket No. 15-00042. In fact, B&W did initially comply with TPUC's directive by filing its *Application of*

¹ *Final Order Setting Rates*, p. 5 TPUC Docket No. 15-00042 (March 10, 2016).

² *Id.* at 6.

³ *Id.* at 23.

B&W Pipeline, Inc. for a Limited Jurisdiction Blanket Certificate of Public Convenience and Necessity Pursuant to 18 C.F.R. § 284.224 on March 17, 2017.

11. FERC granted B&W's Application on June 15, 2017. A true and exact copy of the Order Issuing Blanket Certificate of Limited Jurisdiction, Docket No. CP17-78-000 (June 15, 2017) is affixed hereto as **Exhibit B**.

12. In its Order, FERC stated:

[u]nder section 284.334 blanket certificate authority, the rates charged by a Hinshaw pipeline may be determined by: (1) electing rates based upon a state-approved transportation rate schedule for comparable service or methodology used in designed city-gate rates for sales or transportation service; or (2) submitting proposed rates to the Commission for approval. *B&W's [sic] chose to make a rate election based upon the rates approved by the [TPUC].* (Emphasis added)

13. While FERC stated B&W could elect to choose between two options for setting rates, B&W had previously litigated a general rate case before TPUC in TPUC Docket No. 15-00042, and TPUC issued its *Final Order* based on the proof presented during that proceeding. To comply with TPUC's decision, B&W was required to utilize TPUC's rates rather than seeking new rates from FERC. And while B&W did initially comply with TPUC's ruling, it later opted to instead seek new rates from FERC in contradiction with TPUC's decision.

14. The turning point in B&W's conduct occurred on July 17, 2017 when B&W elected to submit new proposed rates for FERC consideration. These rates are substantially higher than those approved by TPUC and, most importantly, B&W requested to set rates based on B&W's original purchase price of all assets (including both the pipeline and oil and gas wells unrelated to B&W's regulated activities), which was a litigated issue in TPUC Docket No. 15-00042. TPUC, however, had explicitly ruled against B&W concerning its arguments to recover the full purchase

price. *B&W Pipeline, LLC v. Tennessee Regulatory Authority et al.*, No. M2016-02013-COA-R12-CV (Tenn Ct. App. August 24, 2017).

15. On March 21, 2019, B&W filed a unilateral settlement agreement in FERC Docket No. PR17-54-00. Only after filing this unilateral settlement agreement did B&W provide notice on March 27, 2019 to Navitas TNNG, LLC and TPUC (in the TPUC Docket). Neither Navitas KYNG, LLC nor the Kentucky Public Service Commission were contacted by B&W about the rate case at any time. This unilateral settlement agreement and the rates contained therein were approved by FERC on May 17, 2019.

16. On May 17, 2019, FERC entered a Letter Order Pursuant § 375.307 authorizing B&W to charge the amount of \$2.7172 per mcf, effective July 17, 2017, for “interruptible transportation service” provided on its pipeline system. A true and exact copy of the FERC Letter Order dated May, 2019 is affixed hereto as **Exhibit C**.

17. On June 18, 2019, exactly 31 days after the May 17, 2019 FERC Letter Order was issued to B&W and one day after the FERC deadline for “requests for rehearing” by interested parties had expired, B&W sent a demand letter to Navitas Utilities Corporation (the operator of Navitas TNNG, LLC and Navitas KYNG, LLC) requesting an upward adjustment of the interstate rate for interruptible transportation service and an arrearage amount retroactive to July 17, 2017.

18. During the summer of 2019, Navitas requested a rehearing of the FERC proceeding, but this request was denied by FERC on September 4, 2019. A copy of the FERC’s September 4, 2019 Order Dismissing Request for Rehearing is affixed hereto as **Exhibit D**. No notices were ever issued to Navitas KYNG, LLC or the Kentucky Public Service Commission, notwithstanding the fact that the rate proceeding was intended to impact Kentucky customers.

19. In its September 4, 2019 Order denying Navitas' request for a rehearing, FERC issued the following clarification:

“Navitas is subject to B&W’s SOC to the extent it wishes to ship natural gas in interstate commerce via B&W’s facilities.”

20. A substantial amount of natural gas is produced proximate to the B&W Pipeline by its affiliate, FWM also known as Sparta Energy, LLC. Unlike the gas from the Spectra East Tennessee Pipeline, which is owned by Navitas, Navitas does not have custody of the B&W affiliate gas until it passes into the Navitas KYNG system.

21. On or about September 10, 2019, in response to a Notice of Probable Shut Down and Discontinuation of Tennessee Service submit to TPUC by Navitas, TPUC initiated an emergency rate adjustment proceeding to resolve the issue of the transportation charge increase affecting 84 Tennessee customers, none of which were large users. These customers could not economically cover the large customer charge heretofore bourn jointly by Tennessee and Kentucky customers. In the absence of a timely solution, these customers would likely depart the Tennessee system in mass.

22. On September 12, 2019, in response to a data request issued by TPUC Staff, B&W indicated that it intended to charge the full \$13,987, as well as the volumetric charge, to these Tennessee customers “until the Commission orders otherwise.”⁴

⁴ B&W’s Responses to TPUC Staff’s First Data Request, No. 5 (September 12, 2019).

23. At the October 16, 2019 hearing on the matter, TPUC directed B&W to amend 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.

24. The initial Tennessee Order established a fixed charge of \$13,897 per month. This charge is split between the Navitas TN NG and the Navitas KY NG customers on a *pro rata* share of flow. Approximately 90 percent of the flow is to Kentucky customers, which includes a hospital and a large industrial user.

The Current Application for Alternative Rate Adjustment

25. Navitas is filing this Application for the benefit of B&W with respect to the Kentucky customers. B&W is seeking retroactive collection of tariff monies (hereinafter referred to as “the arrearage”) for the interstate transportation of natural gas to Navitas’ Kentucky customers pursuant to FERC’s May 17, 2019 Letter Order.

26. According to a Letter from B&W’s counsel to Navitas dated November 8, 2019, “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.*” (Emphasis added). A true and exact copy of the Letter from B&W’s counsel to Navitas is affixed hereto as **Exhibit E**. The *pro rate* portion of the monthly charge paid by Kentucky customers is approximately \$12,500.00. Thus, this amount monthly during the arrearage period should be taken into account in calculating the arrearage.

27. FERC set the rate effective July 17, 2017. However, due to the timing of recent GCA filings with the Commission, the period from February 2019 to the present has already been

accounted for under the new FERC tariff rate. Thus, the only arrearage period at issue herein is from July 2017 to the end of January 2019.

28. In addition, Navitas asserts that in view of the FERC's clarification in its September 4, 2019 Order Dismissing Navitas' Request for a Rehearing, only natural gas that has passed into the custody or title of Navitas is subject to the new transportation tariff. The gas owned by Navitas that was transported through the B&W Pipeline from the Spectra East Tennessee Pipeline is subject to the new transportation tariff. There is a question as to whether the gas owned by Sparta Energy, a B&W affiliate, that was transported through the B&W Pipeline from the Sparta gas fields is subject to the new transportation tariff. The Sparta gas fields were previously owned by FWM, a different affiliate company of B&W, and ownership of these gas fields changed hands some time after July 17, 2017. No written proof has been provided to Navitas that the B&W Pipeline transportation costs shifted to Navitas at the B&W point of entry between July 17, 2017 and September 30, 2019 when Navitas purchased gas from FWM or B&W. A diagram of the B&W Pipeline system is affixed hereto as **Exhibit F**.

29. Moreover, the arrearage amount sought in this Application is affected, in part, by B&W's failure to charge the \$0.30813 per MCF tariff Ordered by the Tennessee Regulatory Authority's ("TRA") on March 10, 2016 (Docket NO. 15-00042) in its previous general rate case. B&W never bothered to charge this amount, but was authorized to do so and per its own statements required to do so. The amount at issue with respect to the \$0.30813 per MCF tariff is approximately \$53,646.60, which would have reduced the arrearage amount owed in this matter. The Commission should take this amount into account in this Application.

30. Furthermore, other factors affecting the amount of the arrearage at issue in this Application include the amount owed by B&W to Navitas for oil flooding operations in Tennessee.

For a substantial period of time, B&W Pipeline took the Navitas gas from the Spectra East Tennessee Pipeline and delivered it to its affiliate, FWM, to flood its oil field production operations. It then replaced that gas with its own production further down the line. By verbal agreement with B&W, Navitas agreed not to charge B&W as a Tennessee customer, as it was legally entitled to do, for the gas supply from Spectra due to the gas swap. However, in view of B&W's current effort to now charge Navitas the FERC-approved transportation rate for this gas flowing through its pipeline, Navitas is entitled to collect payment (Tennessee tariff of \$7.55 per MCF) for the Spectra gas taken by B&W. For its part, Navitas, in an effort to protect its Kentucky customers, is willing to contribute these funds toward the arrearage.

31. Between July 17, 2017 and January 31, 2019, Navitas KY NG, LLC sold approximately 174,104 MCF of gas. B&W received approximately \$245,191 in transport payments collected from Navitas KYNG, LLC customers. The spreadsheet affixed hereto as **Exhibit G**, provides an approximate calculation of the amount of the arrearage at issue between July 2017 and January 31, 2019. Taking into account the reduction of \$53,646.60 with respect to B&W's failure to charge the \$0.30813 per MCF tariff as described in paragraph 29, the arrearage amount is calculated to be \$191,545.

32. It is important to note that the figure of \$191,545 does not take into account any further reduction that may be applicable for the revenue B&W owes Navitas for delivery of gas in Tennessee for its oil flooding operations.

33. In 2018 Navitas KY delivered 117,861 MCF to its Kentucky customers. Accordingly, Navitas is requesting an alternative rate adjustment or surcharge that covers the arrearage amount imposed upon Navitas by the FERC and B&W. Because these funds are being requested on behalf of B&W, the parties agree to work with the Commission towards a reasonable

number that takes into account all of the issues set forth in this Application, a number that is in the best interests of the customers and enables Navitas to remain competitive.

34. As this matter predominantly impacts Kentucky customers and must be approved by the Kentucky Public Service Commission, all communications concerning this document should be addressed directly to the following:

Thomas Hartline, President
Navitas Utility Corporation
3186D Airway Avenue
Costa Mesa, CA 92626
714.242-4064
714.850.0876 (fax)
Email: thartline@navitasutility.com

35. Pursuant to 807 KAR 5:076 § 4, a copy of the public notice of proposed rate change provided to customers and a completed ARF Form - 3 are affixed hereto as **Exhibit H**.

WHEREFORE, Navitas KY NG, LLC respectfully requests the Commission to issue an Order:

1. Approving Navitas' request for an Alternative Rate Adjustment or surcharge as determined by the Commission pursuant to 807 KAR 5:076 *et seq.*; and
2. Granting such other relief as the Commission may determine to be fair, just and equitable in the premises.

Dated this 25th day of November, 2019.

Respectfully submitted,



Klint W. Alexander (#88343)
Counsel for Navitas KY NG, LLC
1767 Nottage Ct
Laramie, WY 82072
(615) 594-4377
klint.alexander10@gmail.com

VERIFICATION OF NAVITAS KY NG, LLC

STATE OF CALIFORNIA)
)
) ss.
COUNTY OF ORANGE)

I, Thomas Hartline, Secretary of Navitas KY NG, LLC, being duly sworn according to law, makes oath and affirm that I have read the foregoing documentation, know the contents thereof, and that the same is true and accurate to the best of my knowledge, information and belief.

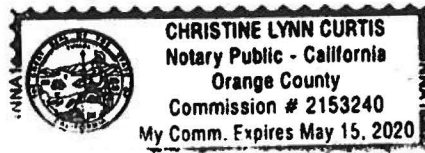

THOMAS HARTLINE

Subscribed and sworn to me on this the 21 day of November, 2019, by Thomas Hartline, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Notary Public Signature

Christine Lynn Curtis

Notary Public Seal



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 25th day of November, 2019, a true and correct copy of the foregoing instrument was deposited in the United States Mail with postage prepaid, and addressed to the following:

Gwen Pinson
Executive Director
Public Service Commission
Commonwealth of Kentucky
211 Sower Blvd.
Frankfort, KY 40601

Larry Cook
Office of the Attorney General
Rate Intervention
700 Capitol Ave. Suite 20
Frankfort, KY 40601



Klint W. Alexander

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 10, 2016

IN RE:

**PETITION OF B&W PIPELINE, LLC
FOR AN INCREASE IN RATES**

)
)
)
)

**DOCKET NO.
15-00042**

FINAL ORDER SETTING RATES

This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones and Director Robin Morrison of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on December 14, 2015, for consideration of the *Petition of B&W Pipeline, LLC for an Increase in Rates* filed by B&W Pipeline, LLC ("B&W" or the "Company") on April 2, 2015.

Upon consideration of the entire record, including all exhibits and the testimony of the witnesses, the panel unanimously concluded that the Company had a Revenue Deficiency of \$114,118 which should be recovered through increases to the base and volumetric rates.

BACKGROUND AND TRAVEL OF THE CASE

B&W as a public utility is subject to the Authority's jurisdiction. B&W owns a pipeline consisting of approximately fifty miles of natural gas pipeline located inside the State of Tennessee running through Pickett, Morgan and Fentress counties. The pipeline was formerly held by The Titan Energy Group, a subsidiary of Gasco Distribution Systems, Inc. ("Gasco"), an entity that went bankrupt.¹ As a result of the bankruptcy, Gasco's pipeline and local distribution systems were separated. B&W acquired the pipeline portion of Gasco and was granted a

¹ *Application of B&W Pipeline, LLC for a Certificate of Convenience and Necessity*, Docket No. 13-00151, *Order Granting Certificate of Public Convenience and Necessity*, p. 1, (January 8, 2015).

Ex A —

Certificate of Public Convenience and Necessity (“CCN”) by the Authority in Docket No. 13-00151. The pipeline and approximately ninety-six (96) oil and gas wells were acquired in 2010.² B&W is a wholly owned subsidiary of FIR Energy. B&W is provided administrative and management services from an affiliate, Enrema, LLC (“Enrema”).³ Gasco’s former local distribution system operates as a public utility by Navitas TN NG, LLC (“Navitas”).

On April 2, 2015, B&W filed the *Petition* requesting approval of a rate increase. B&W’s rate prior to this proceeding was \$0.60 per Mcf stemming from a contract rate that was in place at the time of acquisition.⁴ Based upon the Company’s projections, it estimates a net operating loss of \$256,111 for the attrition period ending December 31, 2016. Based upon the testimony, methodology and projections employed by B&W, the Company estimates additional revenue of \$525,648 is necessary in order to achieve the requested rate of return of 10.12%.⁵ In total, B&W’s *Petition* sought to increase the rate from \$0.60 to \$3.69 per Mcf.⁶

During the Authority Conference on April 20, 2015, the panel voted unanimously to convene a contested case proceeding and appoint the Authority’s General Counsel or her designee to act as Hearing Officer to prepare this matter for hearing, including establishing a procedural schedule, entering a protective order, and ruling on intervention requests and discovery issues. On April 20, 2015, the Consumer Advocate and Protection Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) filed a *Petition to Intervene*. Navitas filed a *Petition to Intervene* on April 28, 2015. The respective interventions of the Consumer Advocate and Navitas were subsequently granted by the Hearing Officer.⁷ Following

² *Id.*, at fn. 2 (January 8, 2015); Transcript of Hearing, p. 49 (September 14, 2015).

³ Transcript of Hearing, pp. 35-36 (September 14, 2015).

⁴ Pre-filed Direct Testimony of Rafael Ramon, p. 4 (April 2, 2015).

⁵ *Corrected Company Exhibits*, Schedule 1 (May 22, 2015).

⁶ Pre-filed Direct Testimony of William H. Novak, p. 9 (April 2, 2015).

⁷ *Order Granting the Consumer Advocate’s and Navitas TN NG, LLC’s Petitions to Intervene* (May 29, 2015).

the submission of discovery and pre-filed testimony pursuant to a procedural schedule, the parties prepared for a hearing.

THE HEARING

A Hearing on this matter was held on September 14, 2015, as noticed by the Authority on September 4, 2015. Participating in the Hearing were the following parties:

B&W Pipeline, LLC – Henry M. Walker, Esq., Bradley Arant Boult Cummings, LLP, 1600 Division Street, Suite 700, Nashville, TN 37203.

Consumer Advocate and Protection Division – Rachel Newton, Office of the Attorney General and Reporter, P.O. Box 20207, Nashville TN 37202-0207.

Navitas TN NG, LLC – Klint Alexander, Esq., Baker Donelson Bearman Caldwell & Berkowitz, P.C., 211 Commerce Street, Suite 800, Nashville, TN 37201.

Upon request of the Consumer Advocate and without the objection of any party, the panel took administrative notice of Docket No. 13-00151.⁸ At the Hearing, the panel heard testimony from witnesses Hal Novak and Rafael Ramon, on behalf of the Company, Ralph Smith on behalf of the Consumer Advocate and Thomas Hartline on behalf of Navitas. Cross-examination of Dr. Christopher Klein, a witness on behalf of the Consumer Advocate's proposed rate of return, was entered into the record without the need for Dr. Klein to offer testimony at the hearing.⁹

In addition, members of the public were given the opportunity to present comments to the panel. No members of the public sought recognition to do so.

POST-HEARING FILINGS

At the direction of the panel, the Consumer Advocate and B&W filed post-hearing briefs on September 30, 2015 and October 9, 2015, respectively, concerning B&W's Hinshaw status and the extent of the Authority's jurisdiction to set rates. On October 7, 2015, the TRA Staff

⁸ Transcript of Hearing, pp. 6-7 (September 14, 2015).

⁹ *Id.* at 12, 110.

issued data requests to B&W and Navitas concerning throughput volumes.¹⁰ B&W filed a response on October 15, 2015 and Navitas filed a response on October 21, 2015. After the filing of the data responses, the parties further informed the hearing officer that they did not seek to make additional argument or request further cross-examination of the evidence.¹¹

B&W filed an *Unopposed Motion to Postpone Decision Until December Conference*, which stated that the parties required additional time to continue settlement negotiations and requesting the Authority to wait to make a decision until the Authority Conference scheduled for December 14, 2015.¹² In its motion, B&W agreed to waive for another thirty (30) days the six month deadline set forth in Tenn. Code Ann. § 65-5-103(b)(1), which authorizes a public utility to place proposed rates into effect, subject to certain conditions, six months after the filing of a petition to increase rates.

FINDINGS AND CONCLUSIONS ON JURISDICTION AND B&W'S HINSHAW STATUS

The Authority has jurisdiction to set the rates of public utilities operating in the State of Tennessee.¹³ B&W is a public utility which was granted a CCN by the Authority in Docket No. 13-00151.¹⁴ B&W's pipeline is approximately fifty miles long and runs through Pickett, Morgan and Fentress counties within the borders of the State of Tennessee. The northern end of the pipeline ends just south of the Kentucky border near Byrdstown, Tennessee.¹⁵ The gas transported by B&W's pipeline is received and delivered within the State of Tennessee. However, during the course of the hearing, testimony from the parties and responses to questions

¹⁰ *TRA Third Data Request to B&W Pipeline, LLC* (October 7, 2015); *TRA Third Data Request to Navitas TN LG, LLC* (October 7, 2015).

¹¹ *Order* (November 16, 2015).

¹² *Unopposed Motion to Postpone Decision Until December Conference* (October 26, 2015).

¹³ Tenn. Code Ann. §§ 65-4-101(6); 65-4-104; 65-5-101, *et seq.*

¹⁴ *Application of B&W Pipeline, LLC for a Certificate of Convenience and Necessity*, Docket No. 13-00151, *Order Granting Certificate of Public Convenience and Necessity* (January 8, 2015).

¹⁵ *Post-Hearing Brief of B&W Pipeline, LLC* (October 9, 2015). A map attached to the Company's post-hearing brief shows the location of the pipeline.

by the TRA Staff indicated that a portion of the gas B&W delivers to Navitas is ultimately consumed in the State of Kentucky.¹⁶

The Federal Energy Regulatory Commission (“FERC”) has jurisdiction over interstate pipelines, with exceptions.¹⁷ A pipeline is exempt from FERC regulation if it meets the “Hinshaw” standards pursuant to 15 U.S.C. § 717(c). To qualify for Hinshaw status, a pipeline must be subject to state regulation, receive all of its out-of-state gas from persons within or at the boundary of a state and such gas *must be ultimately consumed within the state*.¹⁸ Congress has concluded such pipelines are matters primarily of local concern, and so are more appropriately regulated by pertinent state agencies, such as the TRA, rather than FERC.¹⁹

As a result of information arising during the hearing that B&W might not qualify for Hinshaw status, the panel requested that the parties file post-hearing briefs concerning B&W’s Hinshaw status and the Authority’s jurisdiction to set the rates of B&W.²⁰ In post-hearing filings, the Consumer Advocate and B&W agreed that B&W is not a Hinshaw pipeline; however, both contend that the Authority may assert jurisdiction as to rates charged for the gas delivered and ultimately consumed in Tennessee pending FERC’s consideration of blanket certificate pursuant to 18 C.F.R. § 284.224.²¹

While B&W both receives and delivers natural gas within the borders of the state; however, the record reflects that a large portion of the gas B&W delivers is ultimately consumed beyond Tennessee’s borders. Thus, the panel finds that B&W is not a Hinshaw pipeline. Nevertheless, upon examination of FERC’s regulatory framework, application of 15 U.S.C.

¹⁶ Transcript of Hearing, pp. 100-102, 108-109, 134-136, 177 (September 14, 2015).

¹⁷ 15 U.S.C. § 717 *et seq.*

¹⁸ 15 U.S.C. § 717(c). (emphasis added).

¹⁹ *Id.*

²⁰ Transcript of Hearing, p. 193 (September 14, 2015).

²¹ *Post-Hearing Brief of B&W Pipeline, LLC* (October 9, 2015); *Post-Hearing Brief of the Consumer Advocate*, (October 9, 2015). Navitas did not file a post-hearing brief and did not assert a position on whether B&W was a Hinshaw pipeline.

§ 717(c) and applicable federal regulations, specifically 18 C.F.R. § 284.224, the panel finds that the Authority has the jurisdiction to set a rate under traditional rate-making principles that applies to all gas that is delivered to B&W's customers that is ultimately consumed within Tennessee.

Therefore, the panel concludes that as B&W is not a Hinshaw pipeline, the Company must address its status with FERC, specifically by applying for an Order No. 63 certificate exemption pursuant to 18 C.F.R. § 284.224.²² A FERC Order 63 certificate would allow B&W to acquire Hinshaw-like status with FERC and thus authorize the TRA to set rates for all of the gas delivered by B&W to Navitas, including for those volumes consumed by customers in Kentucky. As part of the application for a blanket certificate, B&W shall utilize this Order and the rate established herein for FERC for review.

CRITERIA FOR JUST AND REASONABLE RATES

In setting rates for public utilities, the Authority balances the interests of the utilities subject to its jurisdiction with the interests of Tennessee consumers, i.e., it is obligated to fix just and reasonable rates.²³ The Authority must also approve rates that provide regulated utilities the opportunity to earn a just and reasonable return on their investments.²⁴ The Authority considers petitions for a rate increase, filed pursuant to Tenn. Code Ann. § 65-5-203, in light of the following criteria:

1. The investment or rate base upon which the utility should be permitted to earn a fair rate of return;
2. The proper level of revenues for the utility;
3. The proper level of expenses for the utility; and

²² B&W indicated it has consulted with FERC and acknowledged that the Company needs to obtain a blanket certificate under 18 C.F.R. § 284.224. *Post-Hearing Brief of B&W Pipeline, LLC*, at 3, fn. 5 (October 9, 2015).

²³ Tenn. Code Ann. § 65-5-201 (2015).

²⁴ See *Bluefield Water Works and Improvement Company v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 43 S.Ct. 675 (1923).

4. The rate of return the utility should earn.

Applying these criteria, and upon consideration of the entire record, including all exhibits and the testimony of the witnesses, the panel made the following findings and conclusions.

CONTESTED ISSUES

A number of aspects of the proposed rate increase were contested by the intervening parties. Based on the evidence in the record and the Authority's own expertise, the panel considered the arguments and positions of the parties, summarized here, and made the following determinations.

A. Revenues/Gas Volumes

The Company's total throughput for the attrition period of 169,861 Mcfs included actual test period transportation throughput for Navitas of 60,411 Mcfs, B&W's anticipated throughput for B&W's affiliates of 47,450 Mcfs, and B&W's anticipated throughput for Navitas's two additional customers of 62,000 Mcfs. The Company's throughput produced revenue of \$101,917 for the attrition period.

The Consumer Advocate's throughput calculation of 212,628 Mcfs includes 47,450 Mcfs for B&W's anticipated transportation volumes for B&W's affiliates, 45,178 Mcf for Navitas's provided throughput for its current customers and 120,000 Mcfs for Navitas's projected throughput for the two new customers. The source of Navitas's throughput projections utilized by Mr. Smith were provided as a response to the Authority's July 17, 2015 data request.²⁵ The Consumer Advocate's throughput produced revenue of \$127,577 for the attrition period.

Based upon the evidence in the record, the panel determined that the pipeline's rates should include all throughput that is transported across the pipeline and not just Navitas's gas sold to customers. Neglecting to include the total transported throughput would understate

²⁵ Transcript of Hearing, p. 113 (September 14, 2015).

B&W's revenues, resulting in higher rates to customers. Therefore, the panel concluded that the proper throughput for Navitas's current customers should be based on Navitas's test period transportation throughput provided by B&W, rather than the sales volumes provided by Navitas. Further, the record supports B&W as the source for best determining the throughput for B&W's affiliates that will occur during the attrition period ending December 31, 2016. Likewise, Navitas is the best judge of anticipated throughput for Navitas's two additional customers. Therefore, the panel adopted transportation throughput for Navitas's current customer base of 60,411 Mcfs, B&W's estimated affiliate throughput of 47,450 Mcfs, and Navitas estimated throughput of 120,000 Mcfs for the two additional customers. This determination results in a total of 227,861 Mcfs and revenues of \$136,717 for the twelve months ending December 31, 2016.

B. Allocation of Operator Fees from Enrema to the regulated operations of B&W – Operations and Maintenance Expense

B&W has no employees of its own. Rather, Enrema (an affiliate of B&W) provides administrative and management functions for which it allocates an operator fee “that is proportionate with the time and resources devoted to conducting these activities.”²⁶ B&W advocates an allocation of 50/50 between regulated and non-regulated operations of B&W.²⁷

Navitas expressed concern with the \$273,000 allocation to B&W from Enrema and the retention of 50% of this allocation by B&W, which focused on the basis of the allocation and that it does not result in B&W subsidizing its affiliates.²⁸

The Consumer Advocate's witness, Mr. Smith, asserted the 2011 contract between Enrema and B&W outlining the allocation methodology is no longer applicable based on B&W's

²⁶ *Id.* at. 27-28.

²⁷ *Id.* at 36.

²⁸ Pre-Filed Testimony of Thomas Hartline, p. 3 (August 11, 2015).

response to discovery requests indicating portions of the agreement are no longer in effect.²⁹ Additionally, Mr. Smith testified that B&W was acquired by FIR Energy investing \$5.7 million in B&W with funds from MI Energy and, in turn, MI Energy investing \$16 million in larger gas and oil projects in Tennessee. Therefore, Mr. Smith asserts that an allocation of something less than 50% of the \$273,000 allocation would be more appropriate. He calculates the regulated portion of the operator fee as 20% (\$54,600) of the allocation from Enrema.³⁰ Mr. Smith points out that the majority of revenue and net margins have come from B&W's oil and gas operations rather than from Navitas for gas transportation service.³¹ The Consumer Advocate did not provide any numerical calculation or any other documentation to support a 20% allocation factor, but instead listed reasons for adopting less than 50% allocation of the operator fee.

The Company proposes that operating fees should be allocated 50/50 between B&W's regulated and unregulated businesses providing that this allocation percentage is proportionate with the time and resources devoted to conducting these activities. B&W is invoiced monthly for \$22,750 by Enrema for operating fees and allocates \$11,375 to the pipeline. In rebuttal pre-filed testimony, Mr. Novak submitted a schedule listing the components and allocation factors determining the \$11,375 operating fee that is assigned to the pipeline. Mr. Novak asserts the labor and benefit costs are allocated to the utility based on each individual's estimated time spent on the utility's business.

While the Company provided invoices from Enrema to B&W, the Company never provided any other documentation to demonstrate what makes up the amount on the invoices. Information and supporting evidence for allocation factors for each expense was requested; however, the Company did not provide time cards, work orders, pay stubs or any other evidence to support the allocation factors that it used in deriving the pipeline's monthly operating fee. The

²⁹ Pre-Filed Direct Testimony of Ralph C. Smith, p. 21 (August 11, 2015).

³⁰ *Id.* at 21-22.

³¹ Pre-Filed Supplemental Direct Testimony of Ralph C. Smith, p. 22 (August 24, 2015).

Company's support for the allocation percentages was that the factors were based on each employee's estimation of time spent on regulated utility business.

Upon consideration, the panel finds that it is reasonable to determine that allocation factors supported by some evidence are more appropriate than relying simply on an individual party's opinions and judgment. The Company provided a schedule listing the components that make up operating fees and the allocation factors for assigning the components to the pipeline. The Company allocated the labor and benefit costs based on estimated time spent on the utility's business. The Consumer Advocate relied on its professional judgment and opinions to arrive at its allocation factors. While salary and wage rates, time reports or other documentation could have further supported the amount of labor and benefits allocated to the pipeline, the panel concludes that the Company's estimate is, at this time and under the circumstances of this case, the best supported estimate in the record.

Therefore, the panel voted to set the allocation factor for operating fees at 50%, resulting in Operating Fees of \$136,500 annually. The panel cautioned the Company that in future cases it should file allocation factors with more supportive documentation, rather than relying solely on employee's judgments. Absent such additional support, the panel noted that future requests for recovery of operator fees may be disallowed.

C. Rate Base

The primary contested issue concerning rate base centered on whether to allow the inclusion of B&W's acquisition cost of \$2,633,085 in rate base calculations, as proposed by the Company. B&W acquired the pipeline and ninety six (96) oil and natural gas wells for \$2,633,085 from Gasco's bankruptcy proceeding in 2010. The Company had no records for the net book value of the pipeline, but rather recorded the acquisition price as plant in service.³²

³² Transcript of Hearing, p. 115 (September 14, 2015).

According to the Company, because the seller would not sever the pipeline from the wells, B&W had to take the wells in order to get the pipeline; therefore B&W assigned none of the acquisition cost to the wells. B&W estimated the value of the producing wells to be \$60,943 and the net liability of capping the inactive wells to be \$29,845.³³

Mr. Ramon testified that when Enrema acquired the pipeline it was not buying a company, but instead was buying an asset that had the potential to work in conjunction with the existing plan of developing gas and oil.³⁴ Mr. Ramon testified that while reversing the flow on the pipeline (to flow gas produced by B&W affiliates back to Spectra for sale on the open market) was not an objective at the time of purchase, it was an alternative.³⁵ B&W believes it made a good business decision in purchasing the pipeline for \$2.6 million because it is less than the cost to build one.³⁶ Mr. Ramon further testified that the Company became aware after the purchase that approximately 40 to 50 of the wells had already been plugged or handed over to the landowners. Further, only thirteen (13) of the wells are currently producing oil or gas.³⁷

In addition, the Company supported its acquisition cost with an independent analysis performed by Bell Engineering.³⁸ The Bell analysis estimates the 2013 replacement cost of the pipeline to be \$12,885,858 and the undepreciated costs are \$6,559,308, which far exceeds the acquisition cost included in rate base. Even if this amount is depreciated back to the pipeline's construction date, its replacement value still exceeds the amount included in rate base.³⁹ Although the analysis is based upon a 2013 replacement value, Mr. Novak argues that even if one discounts this undepreciated market value by 3% back to the construction date, the

³³ Pre-Filed Rebuttal Testimony of William H. Novak, pp. 2-4 (August 17, 2015).

³⁴ Transcript of Hearing, pp. 46-47 (September 14, 2015).

³⁵ *Id.* at 43-44.

³⁶ *Id.* at 53.

³⁷ *Id.* at 60-61.

³⁸ Pre-Filed Rebuttal Testimony of William H. Novak, WHN Rebuttal-2 (August 17, 2015).

³⁹ *Id.*

discounted replacement cost value to construction date of \$2,863,070 exceeds the acquisition cost utilized by the Company in this case.⁴⁰

Navitas noted that 100% of the purchase price is attributed in B&W's rate case to the pipeline although other assets, including wells, were included in the transaction. Mr. Hartline asserts that there is no sound economic basis for spending \$2 million on a pipeline that earns \$20,000 annually.⁴¹ Therefore, a substantial portion of the purchase price is and should be attributed to the other assets purchased in the transaction.⁴² Mr. Hartline testified that the Bell Engineering report was an inappropriate basis to support inclusion of the acquisition costs as replacing the pipeline today would be uneconomic in the rural area the pipeline services.⁴³

In the pre-filed testimony of Mr. Smith, the Consumer Advocate proposed to exclude from Plant in Service the pipeline purchase cost and, instead, treat it as an Acquisition Adjustment because B&W failed to provide reliable information on the original cost of the pipeline.⁴⁴ Mr. Smith explains that any amount paid for utility plant in excess of the utility's original costs are referred to as "Goodwill" or Acquisition Premium, and not allowed recovery in rates because it is not used or useful in the provision of utility service. Disallowance of Goodwill or Acquisition Premium discourages companies from marking up the cost of assets used to provide utility service through the transfer or selling to different owners. Mr. Smith states that B&W was unable to provide the original cost, and the pipeline cost was not available from the books of Gasco (the seller) or the property tax information on file for Gasco. He determined from the responses to data requests that B&W did acquire 96 oil and gas wells along with the pipeline and that B&W determined the net value of these wells to be a negative \$29,845

⁴⁰ *Id.* at 4.

⁴¹ Pre-Filed Testimony of Thomas Hartline, p. 3 (August 11, 2015).

⁴² *Id.*

⁴³ Transcript of Hearing, p. 170 (September 14, 2015).

⁴⁴ Pre-filed Testimony of Ralph C. Smith, pp. 18-19 (August 11, 2015).

due to the cost of capping inactive wells. Therefore, none of purchase price was assigned by B&W to the wells.

From B&W's 2012 trial balance, Mr. Smith ascertained that there was a gross profit of \$182,582, which included \$19,729 for gas transportation and \$162,853 from oil and gas sales and royalties. Thus, according to Mr. Smith, of the revenues generated by the pipeline, 11% were from transportation service and 89% from oil and gas sales and royalties. The wells in question have since been transferred to a B&W affiliate, Rugby Energy, LLC, and are operated by another affiliate, Enrema, which is the same affiliate charging B&W an annual operator fee. Because of the gross profit in 2012 and the transfer taking place between two affiliates with the same ownership, Mr. Smith questions the lack of compensation for the wells. For these reasons, the Consumer Advocate removed the acquisition amount of \$2,597,285 from Plant in Service and left only the \$437,715⁴⁵ as the cost of the pipeline. This represents the amount spent by B&W for safety improvements after B&W acquired the pipeline.⁴⁶ Removing this amount from Plant in Service results in a reduction of the attrition year mid-point accumulated depreciation by \$568,367 for a total rate base reduction of \$2,028,918 related to the cost of the pipeline.

In response to data requests from Authority Staff, Navitas provided records from the previous owner of the pipeline, including a 2008 tax return.⁴⁷ During the hearing, Mr. Smith addressed the 2008 federal income tax return, stating that the reported pipeline assets at the end of 2008 were \$854,926 as plant – depreciable assets. The tax return reported accumulated depreciation of \$703,017 as of December 31st, 2008 and a land asset reported in the amount of \$68,538. The reported tax year depreciation was \$22,564, which is representative of a depreciable life of approximately 38 to 40 years; reasonable for a gas pipeline. Mr. Smith points out the return was prepared by a CPA and signed by an officer of the Company and as such,

⁴⁵ B&W Data Response to CAPD 1-5 (June 18, 2015).

⁴⁶ Pre-Filed Direct Testimony of Ralph C. Smith, pp. 9-19 (August 11, 2015).

⁴⁷ Navitas Response to TRA Data Requests of August 24, 2015, Exhibit A (September 8, 2016).

appeared to be the most reasonable and reliable information available on the value of the pipeline.⁴⁸

With respect to Gasco's 2008 tax return, Mr. Novak responded that the affiliate IRS PBA code listed is for mineral extraction. Therefore the return is not really applicable in this case because it does not represent a value for the pipeline. Rather it represents a value for the oil and gas wells.⁴⁹ Mr. Smith was cross-examined regarding the IRS PBA codes noted by Mr. Novak. Mr. Smith noted that Schedule L of the return lists these as depletable assets, and a pipeline or building should be classified as depreciable assets. Therefore, the tax return is applicable and if one carries the amount out through the midpoint of the attrition year, it would be almost zero (\$17,182) as the Consumer Advocate proposed. Mr. Smith agrees that either zero or \$17,182 would be an acceptable cost of the pipeline at the midpoint of the 2016 attrition year.⁵⁰

Mr. Novak asserts that the Consumer Advocate has ignored the data provided by the Company and the State of Tennessee's tax assessment of the pipeline when he disallows the acquisition cost of the pipeline in his analysis. The tax assessment relied upon by the Company reported to the State of Tennessee as the cost of the pipeline in exact and equal amounts in each county the pipeline operates within, which Mr. Smith questions. Mr. Smith points out that the previous owner had a total assessment of \$756,000, with \$976 assessed in Fentress County, \$227,660 in Pickett County and the remainder in Campbell County, including Jellico.⁵¹ Mr. Smith notes that the tax assessment is prepared by the Company and requires information regarding B&W's last rate case. In sum, the Consumer Advocate contends that the tax assessment relied upon by the Company is an unreasonable basis to support the inclusion of the acquisition price in rate base.

⁴⁸ Transcript of Hearing, pp. 119-121 (September 14, 2015).

⁴⁹ *Id.* at 71-73.

⁵⁰ *Id.* at 122-128.

⁵¹ Supplemental Direct Testimony of Ralph C. Smith, pp. 17-18 (August 24, 2015).

According to Mr. Novak, if Mr. Smith's directive for "burden of proof" were adopted, B&W would have never purchased the pipeline out of bankruptcy since there were no cost records available.⁵² Mr. Novak refers to FERC instructions for recording utility plant in which it states that an estimate of the original cost can be used to determine the cost basis of the plant. He states that it is B&W's best estimate that the pipeline cost is \$2,633,085.⁵³

During the hearing, the Company acknowledged that there is "no clear evidence of what rate base ought to be" and that rate base at this point is a question of policy and fairness.⁵⁴ There is no persuasive evidence that suggests that including the entire purchase price is in the public interest. Under the circumstances of this case, the most reasonable determination is based upon information that is related to the actual cost of the plant when it was constructed. Based on the evidence in the proceeding, the panel finds that including the pipeline at the original cost, rather than the acquisition cost, is the solution that is most fair to both customers and B&W.

The panel further finds that the 2008 tax return of Gasco Distribution Systems, Inc. and Subsidiaries provides the most sound support for the prior owner's original cost and the value of the pipeline at the time of acquisition. Therefore, the panel concludes that B&W's Plant in Service include \$923,364 as the original cost of the pipeline, which includes the prior owner's original cost of plant of \$854,826 and land of \$68,538. Further, including \$923,364 as the original cost of the pipeline, along with \$437,715 of uncontested additions since B&W's acquisition, as well as uncontested land, structures and intangible property of \$119,842, results in total Plant in Service of \$1,480,921. Finally, the panel further adopts Accumulated Depreciation of \$919,975 which includes accumulated depreciation of \$854,826 related to the original pipeline acquired by B&W and \$65,149 of accumulated depreciation related to the new additions.

D. CCN Costs & Rate Case Expense

⁵² Pre-Filed Rebuttal Testimony of William H. Novak, p. 6 (August 17, 2015).

⁵³ *Id.* at 5.

⁵⁴ Transcript of Hearing, pp. 183-184 (September 14, 2015).

The Company included \$74,383 of costs associated with obtaining a CCN as part of the Company's \$86,383 total Professional Services Expense, which are included in Operation & Maintenance Expense.

Mr. Smith testified that the majority of the legal and professional fees included in the operating expenses of the Company were primarily related to B&W obtaining its CCN. Therefore, these costs benefit more than one period and should be capitalized and amortized over a period of time. For this reason, Mr. Smith proposed the \$74,383 be capitalized and amortized over a 20 year period. This reduces operating expenses for the attrition period by \$70,664 and increases rate base by the unamortized amount of \$68,959.⁵⁵ The Consumer Advocate further states that the test year expenses will not be incurred annually by B&W and should be removed from the test period expense and amortized over an appropriate period, such as the period benefitted by the CCN or the useful life of the CCN.

Mr. Smith asserts that the useful life could be viewed as the period that B&W would be providing gas pipeline transportation service. The depreciation rate B&W is using suggests a life for the pipeline of 30 years, and a case could be made for amortizing the CCN over the same term. Mr. Smith contends that the CCN has a benefit to the Company beyond that of a rate case filing cycle, but provides no support for amortizing such costs for 20 years other than his professional judgment.⁵⁶

Mr. Novak states that the Company recognized the entire balance as an expense because deferring the expenses first requires approval from the Authority, which was not received. Mr. Novak testifies that the Company does not object to capitalizing and deferring the CCN costs if the TRA approves this; however, the Company objects to the 20 year recovery period proposed

⁵⁵ Pre-Filed Direct Testimony of Ralph C. Smith, pp. 22-23 (August 11, 2015).

⁵⁶ Pre-Filed Supplemental Direct Testimony of Ralph C. Smith, pp. 22-24 (August 24, 2015).

by Mr. Smith. Mr. Novak states that there is no analysis supporting the 20 year period, the costs are the same type incurred in the preparation of a rate case, and the costs should be amortized over a period no longer than 60 months.⁵⁷

Upon consideration, the panel finds that the CCN is effective during the life of the Company, and the costs associated with obtaining the CCN are incurred one time and are non-repetitive. Nonrecurring CCN costs provide a benefit beyond the year of incurrence and for a public utility expenses for CCN proceedings are not recurring annual expenses. For this reason, CCN costs are not normally expensed in the year of incurrence, but rather are deferred and recovered over a specified period of time. Additionally, allowing CCN costs to be included in the test year O&M expenses would effectively allow the Company to continue to recover these costs year after year until such time as another rate case occurs. Therefore, the panel finds that inclusion of the total CCN costs in O&M expenses is unreasonable and that they should be removed from O&M expenses.

Generally, deferral of CCN costs are authorized by the Authority only after a company requests such treatment and is granted permission to do so. Although B&W did not ask for deferral of its CCN costs at the time it obtained its CCN, no party is opposed to establishing a deferral account at this time with amortization over a specified period of time. The circumstances in this rate case are unique. Until recently B&W has not been under this Authority's regulation and this is B&W's first rate case filing with the Authority. The Company has limited experience managing a regulated utility and appears to have been unaware that the Company should request that CCN costs be deferred for recovery in future periods. Further, disallowing the deferral of these costs could cause a financial burden under the circumstances of this case.

⁵⁷ Pre-Filed Supplemental Rebuttal Testimony of William H. Novak, p. 13 (September 3, 2015).

Therefore, the panel concludes that the costs related to B&W obtaining a CCN are similar to the type of expenses incurred when preparing for a general rate case and should be amortized over the same period as Rate Case Expense, which the Company and Consumer Advocate have proposed for recovery over a five (5) year period. Rate Case Expense, however, should optimally be amortized over the period between Rate Cases. Since there is no history from which to estimate the frequency of the Company's rate filings, the panel concludes that the Rate Case Expense should be amortized over three years. The annual Rate Case Expense will be \$20,000. Likewise, the CCN costs should be amortized over three years. For these reasons, the panel approved the removal of \$74,383 associated with obtaining the Company's CCN from expenses; such costs are deferred and recovered through rates over the same time period as the Company's deferred rate case expense, i.e., three years. Allocating the Company's \$74,383 of CCN costs over 3 years results in annual expense of \$24,794. Accounting for the CCN costs in this manner results in the average deferred CCN balance of \$61,986 being included in B&W's rate base for the attrition period. Further, the Deferred Rate Case Expense included in Rate Base will be \$50,000.

F. Operating Expenses

As discussed previously herein, B&W's operating expenses were adjusted by reducing the Professional Services expenses by the CCN costs which were placed in calculations of the Company's rate base. One year of amortized CCN costs and depreciation expense were restated to reflect the panel's decision regarding plant in service and the three year amortization of CCN and Rate Case Expense.

In addition, the panel concludes that is reasonable to remove bank fees incurred by the Company for overdrafts, totalling \$36, from B&W's operating expenses in the attrition year.⁵⁸

⁵⁸ B&W Response to TRA Staff Data Request #2, Q. 10 (September 3, 2015).

Further, the panel concludes it is reasonable for B&W's expense of Taxes Other Than Income be reduced for taxes that were not attributable to the activities of the regulated pipeline.⁵⁹

Therefore, the panel adopts Operating Expenses of \$223,635.

G. Rate of Return

The Company proposed a capital structure of 100% equity and a return on equity of 10.12% based on an average of the return on equity approved by the Authority for Atmos Energy Corporation, Chattanooga Gas Company and Piedmont Natural Gas Company.⁶⁰ Regarding cost of capital, the Consumer Advocate presented the pre-filed testimony of Dr. Christopher Klein, recommending an 8.5% overall return with that return consisting entirely of an equity return.⁶¹ Dr. Klein's pre-filed testimony asserts that the overall cost of capital should be set to provide a return on debt and stock comparable to alternative investments of similar risk. He concurs that B&W is 100% equity financed, and therefore, the only debt consists of intercompany no-interest loans.

Although B&W contested Dr. Klein's proposed rate of return through the pre-filed rebuttal testimony of Mr. Novak, at the hearing the Company determined it would not cross examine Dr. Klein and that the Company would accept an 8.5% overall rate of return.⁶² Based on the agreement of the parties, the panel voted to adopt an 8.5% overall return on rate base as the Company's authorized rate of return and finds the 8.5% overall return to be within the zone of reasonableness in this particular case.

H. Revenue Deficiency

⁵⁹ *Id.*, Q. 11-12 (September 3, 2015).

⁶⁰ Pre-filed Direct Testimony of Hal Novak, p. 8; Schedule 6 (April 2, 2015).

⁶¹ Pre-Filed Direct Testimony of Christopher C. Klein, Ph.D., p. 5 (August 11, 2015).

⁶² Transcript of Hearing, p. 12 (September 14, 2015).

The panel's previous findings and conclusions results in a revenue deficiency for the twelve months ending December 31, 2016 of \$144,118.

I. Rate Design

Using its calculated attrition period revenue deficiency and proposed rate of return, B&W proposes a rate design equivalent to the revenue generated from a rate increase of \$3.00 from the current \$.60 Mcf rate to \$3.69 Mcf.⁶³ Based on the Consumer Advocate's calculated revenue deficiency of \$37,651 and a total revenue requirement of \$165,228, Mr. Smith recommends a monthly fixed charge of \$5,000 for Navitas and \$1,440 for B&W's affiliated customers. Then using estimated throughput of 212,628 Mcf for calculating the volumetric rate, the Consumer Advocate asserted that the rate should be set at \$.41 Mcf.⁶⁴

The Company opposes the proposed adjustments of the Consumer Advocate and request to increase revenues by \$525,648 for a total revenue requirement of \$627,565. Due to the disagreement between the parties on throughput and usage and because these factors have a material impact on earnings, Mr. Novak recommended that the Authority adopt a Sales Adjustment Mechanism ("SAM"). The SAM methodology trues up actual sales volumes to those adopted by the Authority. Any over or under recovery is refunded or surcharged to the customers over the next twelve month period.⁶⁵

To initiate this proposal, Mr. Novak suggested the Authority adopt a daily demand rate structure. Under this methodology, the total revenue requirement of \$627,565 is divided by 365 days to determine a daily billing rate of \$1,719. This daily billing rate is allocated to B&W's two customers based on their previous years' usage with only the allocation recalculated each year (the daily rate would remain constant until the next rate case). Based on the throughput forecast of 210,235 Mcf with Navitas transporting 180,411 Mcf, Navitas would be allocated 86%

⁶³ *Id.* at 94.

⁶⁴ Pre-Filed Direct Testimony of Ralph C. Smith, pp. 24-25 (August 11, 2015).

⁶⁵ Pre-Filed Rebuttal Testimony of William H. Novak, pp. 19-20 (August 17, 2015).

of the billing rate (\$1,571), and B&W's pipeline affiliates would be allocated 14% (\$240).⁶⁶ Mr. Novak stated that B&W does not know how the proposed rate design would affect individual customers because they do not have the volumes for each of these customers. He does believe that the information is available for this calculation from reports on file with the Authority.⁶⁷

Mr. Hartline testified the rate increase sought by B&W will harm Navitas and its customers and could result in making the end user rates uncompetitive with alternative energy sources.⁶⁸ He cites, as an example, the largest customer of Navitas currently pays \$0.92 per ccf which includes gas cost and the current \$0.06 per ccf rate of B&W. This customer has secured a propane contract for approximately \$1.08 per ccf. Mr. Hartline testified that a simple math calculation demonstrates that any rate increase above \$0.16 per ccf or \$1.60 per Mcf (\$1.08 less \$0.92) will result in Navitas being unable to compete with the propane alternative.⁶⁹

The Consumer Advocate expressed its concern regarding the proposed rate increase of B&W and the potential rate shock to customers. Mr. Smith reiterates Mr. Hartline's concerns regarding the loss of a customer to propane use if such an increase is granted. In the alternative, Mr. Smith proposes to recover the Consumer Advocate's projected revenue requirement of \$154,776 (deficiency of \$27,199 and current revenue of \$127,577), through a combination of fixed and volumetric charges. The Consumer Advocate proposes a fixed charge of \$5,000 for Navitas and \$1,440 for B&W affiliates, producing annual revenue of \$77,280. The remaining \$77,496 should be recovered through a \$0.36 volumetric rate.⁷⁰

The panel did not adopt the rates or rate design proposals of either B&W or the other intervening parties. B&W supplies a small amount of gas and it is preferable to design rates where revenues remain relatively constant and shortfalls of revenues due to the volatility of gas

⁶⁶ *Id.* at 20-21.

⁶⁷ Transcript of Hearing, p. 103 (September 14, 2015).

⁶⁸ Pre-Filed Testimony of Thomas Hartline, p. 2 (August 11, 2015).

⁶⁹ *Id.* at 4.

⁷⁰ Pre-Filed Direct Testimony of Ralph C. Smith, pp. 24-25 (August 11, 2015).

usage are minimized. Just and reasonable rates should give the utility the opportunity to achieve the rate of return set by the Authority.⁷¹ Under the specific circumstances of this case, designing rates whereby the majority of revenues are generated from a fixed charge would best accomplish these goals.

For these reasons, the panel adopts a rate design comprised of a fixed monthly charge of \$13,897 to Navitas and a fixed monthly charge of \$3,655 to B&W's other customer, affiliate Rugby Energy, LLC. In addition, the panel adopts a volumetric charge of \$0.3081 per Mcf from all customers going forward. The adoption of this rate design results in an effective rate per Mcf of \$1.23248.

The rate design adopted by the panel is based upon the entire throughput of volumes transported to Navitas, which includes the volumes sold to Kentucky customers. Though the rate design is based on total throughput volumes for both Tennessee and Kentucky, the Authority's jurisdiction applies only to the gas that is delivered to Navitas that is consumed within the borders of Tennessee. Thus, the volumetric rates set here shall apply only to the gas transported by B&W that is consumed in Tennessee. It is the intent of the Authority, with respect to this decision setting rates, that FERC review, consider and grant B&W's timely application for an Order No. 63 certificate, authorizing the use of the rate set in this Order for all gas transported on B&W's pipeline, whether ultimately consumed in Tennessee or Kentucky.

⁷¹ See *Bluefield Water Works and Improvement Company v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 43 S.Ct. 675 (1923).

SUMMARY OF FINDINGS AND CONCLUSIONS

After the Hearing on December 14, 2015, the panel considered the *Petition*. The panel denied the *Petition* of B&W Pipeline, LLC and set new rates based on the following:

1. A historic Test Period of the twelve-months ended December 31, 2014;
2. An Attrition Period of the twelve months ended December 31, 2016;
3. Plant in service of \$1,480,921 with accumulated depreciation of \$919,975;
4. Rate Base of \$672,932, including amortized rate case and CCN expense for a three year period;
5. A rate of return of 8.50%;
6. Operation Expense of 223,635;
7. Revenues of \$136,717;
8. A revenue deficiency of \$114,118 at the end of the Attrition Period;
9. A rate design consisting of a fixed monthly charge of \$13,897 from Navitas TN NG, LLC and a fixed monthly charge of \$3,655 from Ruby Energy, LLC resulting in revenues of \$210,624. In addition, the Authority set a volumetric charge of \$0.30813 per Mcf from all customers.
10. B&W Pipeline, LLC shall provide a copy of this Order to the Federal Energy Regulatory Commission in the Company's application for a blanket certificate pursuant to 18 C.F.R. § 284.224.
11. The Company shall file tariffs accurately reflecting this decision with an effective date of January 1, 2016.
12. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen days from the date of this Order.

13. Any party aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

Chairman Herbert H. Hilliard, Vice Chairman David F. Jones and Director Robin Morrison concur.

ATTEST:



Earl R. Taylor, Executive Director

159 FERC ¶ 62,297
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

B&W Pipeline, L.L.C.

Docket No. CP17-78-000

ORDER ISSUING BLANKET CERTIFICATE OF LIMITED JURISDICTION

(Issued June 15, 2017)

1. On March 17, 2017, B&W Pipeline, L.L.C. (B&W), a Hinshaw Pipeline, filed an application under section 7(c) of the Natural Gas Act (NGA) and section 284.224 of the Commission's regulations for a limited jurisdiction blanket certificate to sell or transport gas in interstate commerce.¹ B&W requests approval of rates and charges based upon its currently-effective rate schedules on file with the Tennessee Regulatory Authority (TRA). For the reasons discussed below, the requested certificate authority is granted and the proposed rate election is accepted subject to the conditions discussed herein.

Background and Proposal

2. B&W, approximately fifty-miles in length, is located entirely within Tennessee and regulated by the TRA. B&W is a Delaware limited liability company authorized to conduct business in the State of Tennessee. B&W was built in sections between 1981 and 1989. B&W initially transported gas from Tennessee gas wells to East Tennessee Natural Gas Company (East Tennessee) for redelivery in interstate commerce. As production declined and other regional market opportunities became available, B&W became a net recipient of gas from East Tennessee, delivering gas to its then affiliate, Gasco Distribution Systems, Inc. (Gasco). Gasco later filed for bankruptcy, and in 2010 B&W's current owners acquired the pipeline and local gas wells, while Navitas² acquired Gasco's distribution facilities. B&W continued to transport gas to Navitas, under a then-existing transportation service contract. Upon expiration of the contract B&W sought permission from the TRA to increase rates, but was advised that they needed to

¹ 18 C.F.R. § 284.224 (2016). Section 284.224 authorizes LDCs and Hinshaw pipelines to perform the same types of transactions which intrastate pipelines are authorized to perform under section 311 of the Natural Gas Policy Act (NGPA) and subparts C and D of Part 284 of the Commission's regulations.

² For the purpose of this proceeding, Navitas Utilities Corporation (Navitas) includes the two separate distribution companies of Navitas TN NG, LLC (Navitas-Tennessee), and Navitas KY NG, LLC (Navitas-Kentucky).

Ex B

obtain a Certificate of Convenience and Necessity and limited jurisdiction blanket certificate to sell or transport gas in interstate commerce from the FERC. The TRA noted that approximately one-fourth of the total amount of gas transported on B&W's system is delivered to Navitas-Tennessee and consumed in Tennessee. Approximately three-fourth's of the gas is delivered at a meter located in Tennessee to Navitas-Kentucky, which transports the gas across the Tennessee-Kentucky line to customers in Kentucky.

3. On April 29, 2016, B&W states that it self-reported to the Federal Energy Regulatory Commission's Office of Enforcement that the pipeline has been operating without interstate authority. At the time of purchase, B&W was unaware that it needed to file with the Commission for a Blanket Certificate of Limited Jurisdiction to continue serving Navitas-Kentucky.³ B&W files this application for a blanket certificate to continue transporting gas from East Tennessee and local wells to Navitas-Kentucky for distribution to local customers in Kentucky. B&W also requests that it be allowed to charge the intrastate rates approved by the TRA for the transportation of all gas on its pipeline, whether the gas is consumed in Tennessee or Kentucky.

4. B&W states that the granting of a blanket certificate will enhance the availability of service to natural gas consumers that have no other source of natural gas in this remote, rural area.

Notice and Intervention

5. Public notice of the filing was issued on March 21, 2017. Interventions and protests were due on or before April 7, 2017. Pursuant to Rule 214 (18 C.F.R. section 385.214 (2016)), all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

Discussion

6. Approval of the blanket certificate will allow B&W to provide service to Navitas-Kentucky and engage in other transactions of the type authorized by subparts C and D of Part 284 of the Commission's Regulations. B&W's primary role will continue to be that of a state-regulated pipeline. B&W proposes to offer firm service to the extent service can be rendered within the limits of the B&W's operating conditions and facilities. B&W's application meets the requirements of section 284.224 and, accordingly, its proposal is in the public convenience and necessity.

³ On April 13, 2017 in Docket No. CP17-171-000, Navitas-Kentucky requested a service area determination pursuant to section 7(f) of the Natural Gas Act. An order on that filing is being issued contemporaneously with this order.

7. Under section 284.224 blanket certificate authority, the rates charged by a Hinshaw pipeline may be determined by: (1) electing rates based upon a state-approved transportation rate schedules for comparable service or the methodology used in designed city-gate rates for sales or transportation service; or (2) submitting proposed rates to the Commission for approval. B&W's chose to make a rate election based upon the rates approved by the TRA. B&W's rate election meets the requirements of sections 284.123 of the Commission's regulations and is deemed to be fair and equitable. Consistent with Commission policy, B&W is required to have its rates reviewed within five years.⁴

8. No new facilities are proposed for construction in the instant application. No environmental assessment or environmental impact statement has been prepared for this application because no environmental impact will be involved with the approval of this project.

Findings:

(A) A blanket certificate of limited jurisdiction is granted under section 284.224 of the Commission's regulations authorizing B&W to engage in the sale and/or transportation of natural gas that is subject to the Commission's jurisdiction under the NGA to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activity by subparts C and D of the Commission's regulations.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon B&W's compliance with all applicable Commission regulations under the NGA and in particular the general terms and conditions set forth in paragraphs (a) and (e) of section 157.20 of the Commission's regulations. Further, the authorization granted herein is also subject to all the terms and conditions in section 284.224 of the Commission's regulations.

(C) The rate election B&W filed pursuant to section 284.123(b) is accepted. Within 30 days of date of this order B&W must file in eTariff a rate election⁵ and

⁴ *Contract Reporting Requirements of Intrastate Natural Gas Companies*, Order No. 735, FERC Stats. & Regs. ¶ 31,310, at P 92, *order on reh'g*, Order No. 735-A, FERC Stats. & Regs. ¶ 31,318 (2010); *see also Hattiesburg Industrial Gas Sales, L.L.C.*, 134 FERC ¶ 61,236 (2011) (imposing a five-year rate review requirement on Hattiesburg Industrial Gas Sales, L.L.C.)

⁵ Under section 284.224 blanket certificate authority, the rates charged by an intrastate pipeline may be determined by: (1) electing rates based upon a state-approved transportation rate schedules for comparable service or the methodology used in designed city-gate rates for sales or transportation service; or (2) submitting proposed rates to the Commission for approval.

Docket No. CP17-78-000

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Statement of Operating Conditions (SOC) as a baseline tariff⁶ in accordance with the regulations adopted in Order No. 714.⁷

9. This action is taken pursuant to the authority delegated to the Director, Division of Pipeline Regulation under 18 C.F.R. section 375.307. This action 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. section 385.713.

Sincerely,

Elizabeth Zerby, Acting Director
Division of Pipeline Regulation

⁶ B&W is reminded that after filing its baseline tariff it must continue to make all subsequent SOC and SOC-related filings electronically using eTariff. *Order Establishing Baseline Filing Schedule Starting April 1, 2010*, 130 FERC ¶ 61,228, at P 7 (2010).

⁷ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:
Letter Order Pursuant § 375.307
B&W Pipeline, LLC
Docket No. PR17-54-000

May 17, 2019

B&W Pipeline, LLC
c/o Bradley Arant Boult Cummings LLP
1600 Division Street, Suite 700
Nashville, TN 37203

Attention: Henry Walker
Attorney for B&W Pipeline, LLC

Reference: Offer of Settlement

Dear Mr. Walker:

1. On March 21, 2019, B&W Pipeline, LLC (B&W Pipeline) filed in the captioned proceeding a Stipulation and Agreement (Settlement), pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.602 (2018). The Settlement resolves all issues with regard to B&W Pipeline's petition for approval of its proposed rates and a Statement of Operating Conditions (SOC), which was filed by B&W Pipeline on July 17, 2017 (Petition). B&W Pipeline filed its Petition, pursuant to section 284.123(b)(2)¹ of the Commission's regulations, after receiving Commission approval for a limited jurisdiction blanket certificate for transportation in interstate commerce as a Hinshaw Pipeline.²
2. The following is a summary of the major provisions of the Settlement:
 - a. Articles I and II set out, respectively, the introduction and background to the Settlement. B&W Pipeline, approximately 50-miles in length, is located

¹ 18 C.F.R. § 284.123 (b)(2) (2018).

² *B&W Pipeline, L.L.C.*, 159 FERC ¶ 62,297 (2017).

Ex C —

entirely within Tennessee and regulated by the Tennessee Regulatory Authority. The pipeline was built in sections between 1981 and 1989. B&W Pipeline initially transported gas from Tennessee gas wells to East Tennessee Natural Gas, LLC (East Tennessee) for redelivery in interstate commerce. As production declined and other regional market opportunities became available, B&W Pipeline became a net recipient of gas from East Tennessee for deliveries to local distribution companies located at the border of Kentucky. On April 29, 2016, B&W Pipeline self-reported to the Federal Energy Regulatory Commission's Office of Enforcement that the pipeline has been operating without interstate authority.

- b. Article III establishes Settlement rates and a cost of service. The provision states that B&W Pipeline was acquired out of bankruptcy with limited documentation. The Settlement contains extensive documentation on estimated original costs of the pipeline and its current value, including an acquisition adjustment as shown in Attachment A to the Settlement. As part of the rate-making provisions in Article III, B&W Pipeline agrees to an adjustment in the instant docket of 21,900 Mcf of additional interstate transportation billing units over those proposed in the Petition, and to include a minimum of 110,000 Mcf for interstate transportation billing units in future rate filings as long as there are no major changes to the system. The maximum rate that B&W Pipeline is authorized to charge for interruptible transportation service provided on its pipeline system pursuant to NGPA section 311 is \$2.7172 per Mcf, effective July 17, 2017.
- c. Article IV provides for changes to the SOC filed in the Petition. B&W Pipeline filed a *pro forma* version of the SOC with the Settlement.³
- d. Article V requires that B&W Pipeline make a future filing in fulfillment of the Commission's quinquennial filing requirement for pipelines transporting natural gas under the NGPA. On or before September 17, 2022, B&W Pipeline shall file a rate petition pursuant to §284.123(b)(2) of the Commission's regulations to justify the Settlement rates or to propose new rates applicable to NGPA section 311 service.
- e. The remaining articles of the Settlement deal with conditions for its effectiveness, its term and its limited precedential value beyond items not specifically stated in the Settlement.

³ Consistent with the terms of the Settlement, B&W Pipeline shall file its actual SOC in eTariff format, using a Type of Filing code 790.

3. Initial comments on the Petition and subsequent Settlement were due on or before August 7, 2017 and April 11, 2019, respectively. No adverse comments or protests were filed. Pursuant to sections 375.307(a)(9)(iii) and 385.602(g)(3) of the Commission's regulations,⁴ the uncontested Settlement appears to be fair and reasonable and in the public interest, and therefore the Settlement is accepted for filing.

4. This letter order does not relieve B&W Pipeline of its obligation to file the required reports under Part 284 of the Commission's regulations. The approval of this settlement does not constitute a precedent regarding any principle or issue in this proceeding.

5. This acceptance for filing shall not be construed as constituting approval of the referenced filing or of any rate, charge, classification, or any rule, regulation, or practice affecting such rate or service contained in your SOC; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

6. 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 (2018).

Issued by: Marsha K. Palazzi, Director, Division of Pipeline Regulation

⁴ 18 C.F.R. §§ 375.307(a)(9)(iii) (2018) and 385.602(g)(3) (2018).

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). NGPA § 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).

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.

(S E A L)

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.



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

EX E

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.

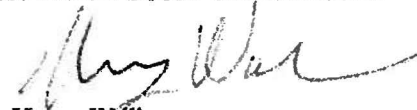
For these reasons, we reject your three objections to the bill and expect prompt payment.

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: 615.252.2363
Fax: 615.252.8383
hwalker@babc.com

RECEIVED
2019 NOV 11 11:30
T.T.C. Bradley ARANT

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
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

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.



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.

(S E A L)

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.

~~SPECTRA~~

~~EX F~~

BURKESVILLE
APACHE
\$2.55/MCF



12 MILES

CHICKEN
PLANT

I90 INDUSTRIAL PARK

18 MILES

MONTICELLO



KY
TN

BYESTOWN



50 MILES

BETW LINE

\$13.897/MO
+ 31¢/MCF [TN ONLY]
\$1.31/MCF MINIMUM (with)
\$10.31/MCF MAXIMUM (with)

~~FINN GAS FIELDS~~

~~SPECTRA EAST TN~~

	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17
Quantity in MCF						
KY customers sales	2704	4983	6437	6306	10869	12716
Gas from East TN Pipeline	835	5371	4577	8775	8233	12107
TN customers sales	212	177	289	725	960	2023
Gas from East TN to KY	623	4983	4288	6306	7273	10084
FERC Tariff \$/MCF	2.7271	2.7271	2.7271	2.7271	2.7271	2.7271
Undisputed FERC tariff	\$ 1,698.17	\$ 13,589.14	\$ 11,694.62	\$ 17,197.09	\$ 19,833.11	\$ 27,499.53
Cumulative		\$ 15,287.30	\$ 26,981.93	\$ 44,179.02	\$ 64,012.13	\$ 91,511.66
Tariff available but not charged	\$ 0.30813	\$ 0.30813	\$ 0.30813	\$ 0.30813	\$ 0.30813	\$ 0.30813
Foregone B&W Tariff	\$ (833.18)	\$ (1,535.41)	\$ (1,983.43)	\$ (1,943.07)	\$ (3,349.06)	\$ (3,918.18)
Cumulative		\$ (2,368.60)	\$ (4,352.03)	\$ (6,295.10)	\$ (9,644.16)	\$ (13,562.34)
KY transport pmts to B&W						
TRA pro rata share paid	\$ (12,885.95)	\$ (13,420.69)	\$ (13,301.11)	\$ (12,463.91)	\$ (12,769.35)	\$ (11,989.98)
Cumulative		\$ (26,306.64)	\$ (39,607.75)	\$ (52,071.66)	\$ (64,841.01)	\$ (76,830.99)
Balance	\$ (12,020.97)	\$ (13,387.93)	\$ (16,977.85)	\$ (14,187.73)	\$ (10,473.04)	\$ 1,118.32
Gas from FWM (Sparta)	2081	0	2149	0	3596	2632
FERC Tariff	2.7271	2.7271	2.7271	2.7271	2.7271	2.7271
Amt in dispute	\$ 5,675.91	\$ -	\$ 5,859.72	\$ -	\$ 9,807.74	\$ 7,178.27
Bal needing clarification	\$ 5,675.91	\$ 5,675.91	\$ 11,535.63	\$ 11,535.63	\$ 21,343.38	\$ 28,521.65
Balance of un & disputed	\$ (6,345.06)	\$ (7,712.02)	\$ (5,442.22)	\$ (2,652.10)	\$ 10,870.33	\$ 29,639.97

	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18
Quantity in MCF						
KY customers sales	12306	12391	13164	13164	6961	6678
Gas from East TN Pipeline	14902	10526	13840	9082	3934	1794
TN customers sales	3943	1690	1922	813	247	130
Gas from East TN to KY	10959	8836	11918	8269	3687	1664
FERC Tariff \$/MCF	2.7271	2.7271	2.7271	2.7271	2.7271	2.7271
Undisputed FERC tariff	\$ 29,887.38	\$ 24,096.66	\$ 32,501.31	\$ 22,550.94	\$ 10,054.27	\$ 4,537.89
Cumulative	\$ 121,399.04	\$ 145,495.69	\$ 177,997.00	\$ 200,547.93	\$ 210,602.21	\$ 215,140.10
Tariff available but not charged	\$ 0.30813	\$ 0.30813	\$ 0.30813	\$ 0.30813	\$ 0.30813	\$ 0.30813
Foregone B&W Tariff	\$ (3,791.85)	\$ (3,818.04)	\$ (4,056.22)	\$ (4,056.25)	\$ (2,144.89)	\$ (2,057.69)
Cumulative	\$ (17,354.19)	\$ (21,172.23)	\$ (25,228.45)	\$ (29,284.71)	\$ (31,429.60)	\$ (33,487.29)
KY transport pmts to B&W						
TRA pro rata share paid	\$ (10,396.13)	\$ (12,076.50)	\$ (11,978.27)	\$ (12,950.68)	\$ (13,267.01)	\$ (13,403.71)
Cumulative	\$ (87,227.13)	\$ (99,303.63)	\$ (111,281.90)	\$ (124,232.57)	\$ (137,499.58)	\$ (150,903.29)
Balance	\$ 16,817.72	\$ 25,019.84	\$ 41,486.65	\$ 47,030.65	\$ 41,673.03	\$ 30,749.52
Gas from FWM (Sparta)	1347	3555	1246	4895	3274	5014
FERC Tariff	2.7271	2.7271	2.7271	2.7271	2.7271	2.7271
Amt in dispute	\$ 3,672.31	\$ 9,694.84	\$ 3,398.24	\$ 13,348.88	\$ 8,929.07	\$ 13,673.68
Bal needing clarification	\$ 32,193.96	\$ 41,888.80	\$ 45,287.04	\$ 58,635.92	\$ 67,564.99	\$ 81,238.67
Balance of un & disputed	\$ 49,011.68	\$ 66,908.64	\$ 86,773.69	\$ 105,666.58	\$ 109,238.02	\$ 111,988.19

	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18
Quantity in MCF						
KY customers sales	5672	6855	6083	7301	13376	13910
Gas from East TN Pipeline	2667	1258	1591	5119	10934	12501
TN customers sales	127	122	133	414	1154	2057
Gas from East TN to KY	2540	1136	1458	4705	9780	10444
FERC Tariff \$/MCF	2.7271	2.7271	2.7271	2.7271	2.7271	2.7271
Undisputed FERC tariff	\$ 6,925.74	\$ 3,097.17	\$ 3,976.11	\$ 12,830.46	\$ 26,672.13	\$ 28,481.29
Cumulative	\$ 222,065.84	\$ 225,163.01	\$ 229,139.12	\$ 241,969.58	\$ 268,641.71	\$ 297,123.00
Tariff available but not charged	\$ 0.30813	\$ 0.30813	\$ 0.30813	\$ 0.30813	\$ 0.30813	\$ 0.30813
Foregone B&W Tariff	\$ (1,747.71)	\$ (2,112.23)	\$ (1,874.29)	\$ (2,249.75)	\$ (4,121.42)	\$ (4,286.09)
Cumulative	\$ (35,235.00)	\$ (37,347.24)	\$ (39,221.53)	\$ (41,471.28)	\$ (45,592.70)	\$ (49,878.79)
KY transport pmts to B&W						
TRA pro rata share paid	\$ (13,349.07)	\$ (13,257.70)	\$ (13,357.26)	\$ (13,467.70)	\$ (13,562.15)	\$ (13,656.06)
Cumulative	\$ (164,252.36)	\$ (177,510.06)	\$ (190,867.32)	\$ (204,335.02)	\$ (217,897.18)	\$ (231,553.24)
Balance	\$ 22,578.48	\$ 10,305.71	\$ (949.73)	\$ (3,836.72)	\$ 5,151.83	\$ 15,690.97
Gas from FWM (Sparta)	3132	5719	4625	2597	3595	3466
FERC Tariff	2.7271	2.7271	2.7271	2.7271	2.7271	2.7271
Amt in dispute	\$ 8,542.37	\$ 15,597.10	\$ 12,612.29	\$ 7,080.92	\$ 9,804.47	\$ 9,452.67
Bal needing clarification	\$ 89,781.04	\$ 105,378.14	\$ 117,990.44	\$ 125,071.35	\$ 134,875.82	\$ 144,328.49
Balance of un & disputed	\$ 112,359.52	\$ 115,683.86	\$ 117,040.71	\$ 121,234.63	\$ 140,027.65	\$ 160,019.46

	<u>Jan-19</u>
Quantity in MCF	
KY customers sales	12228
Gas from East TN Pipeline	12699
TN customers sales	2460
Gas from East TN to KY	10239
FERC Tariff \$/MCF	<u>2.7271</u>
Undisputed FERC tariff	\$ 27,923.87
Cumulative	\$ 325,046.87
Tariff available but not charged	\$ 0.30813
Foregone B&W Tariff	\$ (3,767.81)
Cumulative	\$ (53,646.60)
KY transport pmts to B&W	
TRA pro rata share paid	\$ (13,637.70)
Cumulative	\$ (245,190.94)
Balance	\$ 26,209.32
Gas from FWM (Sparta)	1989
FERC Tariff	<u>2.7271</u>
Amt in dispute	\$ 5,423.11
Bal needing clarification	\$ 149,751.61
Balance of un & disputed	\$ 175,960.93

PUBLIC NOTICE

Notice is hereby given that Navitas KY NG, LLC (“Company” or “Utility”) filed a petition and tariff with the Kentucky Public Service Commission on November 21, 2019, asking that it be permitted to change rates currently being charged in the area being serviced by the Company. The Company’s existing rates for natural gas services are not adequate to permit it to recover its operating costs, meet present and future growth, meet federal and state compliance regulation, and to earn a just and reasonable return on its investments.

The proposed rates increase existing rates. Under the proposed rates, beginning December 7, 2020, customers will be charged as follows:

Customer Classification	Average Annual Usage (MCF)	Current Rate (\$) / CCF	Proposed Rate Increase (\$) / CCF	Percent (%) Rate Change / CCF
Residential Customers	62.1	0.00	0.50	5.0
Industrial Customers	5893.6	0.00	0.50	5.0
Commercial Customers	513.7	0.00	0.50	5.0
Agricultural Customers	1167.0	0.00	0.50	5.0

The monthly residential gas bill increase will be 5.0 percent, or approximately \$0.50, for a customer using 62.1 MCF of gas (the average annual consumption of a Navitas residential customer). The industrial gas bill increase will be 5.0 percent, or approximately \$0.50, for a customer using 5893.6 MCF of gas (the average annual consumption of a Navitas industrial customer). The commercial gas bill increase will be 5.0 percent, or approximately \$0.50, for a customer using 513.7 MCF of gas (the average annual consumption of a Navitas commercial customer). The agricultural gas bill increase will be 5.0 percent, or approximately \$0.50, for a

customer using 1167.0 MCF of gas (the average annual consumption of a Navitas agricultural customer).

A complete copy of the proposed tariff changes and the reasons for them are on file with the Service's business office and with the Kentucky Public Service Commission and are open to public inspection.

Complete copies of the proposed tariffs containing the proposed rates may be obtained by contacting Navitas Utility Corporation 3186 Airway Ave. Ste. D Costa Mesa, CA 92626, (714) 242-4064, or by visiting the Company's website at <http://www.navitasutility.com>.

This application may also be examined at the commission's offices located at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the commission's Web site at <https://psc.ky.gov/>.

Comments regarding the application may be submitted to the Public Service Commission through the commission's Web site or by mail to Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602.

A timely written request for intervention may be submitted to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request, including the status and interest of the party. If the commission does not receive a written request for intervention within thirty (30) days of initial publication or mailing of the notice, the commission may take final action on the application.

Navitas Utility Corporation
3186 Airway Ave. Ste. D
Costa mesa, CA 92626
(714) 242-4064

Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602
(502) 564-3940

STATEMENT OF DISCLOSURE OF RELATED PARTY TRANSACTIONS

I swear or affirm to the best of my knowledge and belief the information set forth below represents all present transactions and those transactions occurring within the past twenty-four (24) months between NAVITAS KING, LLC ("Utility") and related parties that exceed \$25.00 in value. For the purpose of this statement, "related party transactions" include, all transactions and payments in excess of \$25.00, except regular salary, wages and benefits, made directly to or on behalf of: 1) the Utility's current or former employees; 2) current or former members of the Utility's board of commissioners or board of directors; 3) persons who have a 10 percent or greater ownership interest in the Utility; 4) family members* of any current Utility employee, director, commissioner or person with a 10 percent or greater ownership interest in the Utility or 5) a business enterprise in which any current or former Utility employee, director, commissioner or person with a 10 percent or greater ownership interest in the Utility or a family member of such person has an ownership interest.

Name of Related Party (Individual or Business)	Type of Service Provided By Related Party	Amount of Compensation
NAVITAS UTILITY	OPERATIONS	\$1.1 MM / YEAR

- Check this box if the Utility has no related party transactions.
- Check box if additional transactions are listed on the supplemental page.
- Check box if any employee of the Utility is a family member of the Utility's chief executive officer, a Utility commissioner, or any person with a 10 percent or greater ownership interest in the Utility. The name of each employee and the official to whom they are related and the nature of the relationship are listed on the supplemental page entitled "Employees Related to Utility Officials."

Thomas H. Bertine (Print Name) [Signature] (Signed)
PRESIDENT (Position/Office)

* "Family Member" means any person who is the spouse, parent, sibling, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild of any current Utility employee, director, commissioner or person with a 10 percent or greater ownership interest in the Utility; or is a dependent for tax purposes of any Utility employee, director, commissioner or person with a 10 percent or greater ownership interest in the Utility or his or her spouse; or who is a member of the household of any Utility employee, director, commissioner or person with a 10 percent or greater ownership interest in the Utility.

- Ex H

COMMONWEALTH OF KENTUCKY

COUNTY OF Orange

Subscribed and sworn to before me by Thomas Hartline
(Name)

this 21st day of November, 2019.

Christina Lynn Curtis
NOTARY PUBLIC
State-at-Large