

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

On December 23, 2020, Navitas KY NG (Navitas KY), Johnson County Gas Company (Johnson County) and B & H Gas Company (B & H) (collectively, Applicants) tendered for filing a joint application pursuant to KRS 278.020(6) and (7) for approval of the acquisition and transfer of ownership and control of certain gas utility systems in Floyd and Johnson counties owned by Bud Rife, an individual, to Navitas KY in accordance with the terms of a November 30, 2020 Asset Purchase Agreement (Agreement). The minimum filing requirements were satisfied on December 28, 2020, and the joint application was accepted as filed on December 29, 2020.

By Order entered on January 13, 2021, the Commission established a procedural schedule, which provided for two rounds of discovery, intervenor testimony, discovery on the intervenor testimony, if any, and a public hearing. That Order also found good cause to continue the review and consideration of this application for an additional 60 days beyond the initial 60 days, as permitted under KRS 278.020(7). There are no intervenors to this proceeding, so the matter will be decided on the evidence of record.

APPLICANTS

B & H is a Kentucky regulated utility and currently furnishes natural gas to approximately 250 customers in Floyd County, Kentucky.¹ Johnson County is also a Kentucky regulated utility and currently furnishes natural gas to approximately 274 customers in Johnson County, Kentucky.²

Navitas KY is a Kentucky limited liability company, which was formed for the acquisition of the system formerly known as Gasco Distribution Systems, Inc. by Navitas KY, as previously approved by the Commission in Case No. 2010-00468.³ Navitas Assets, LLC (NALLC) is the parent company of Navitas KY and is a Delaware limited liability company.⁴

OVERVIEW OF THE TRANSACTION

According to the application, following the acquisition, the B & H and Johnson County systems will operate under the name of Navitas KY NG, LLC and will be fully integrated into Navitas KY NG, LLC.⁵ Navitas KY intends to retain the two current employees of the acquired systems. Navitas KY states in the application that it intends to adopt the tariff rates on file with the Commission, and that it will subsequently file a separate rate proceeding to revise the rates, terms, and conditions of service of the combined utility as appropriate. Navitas KY requests that the Commission approve the

¹ *Annual Report of B & H Gas Company for the Year Ended December 31, 2019* at 26.

² *Annual Report of Johnson County Gas for the Year Ended December 31, 2019* at 26.

³ Case No 2010-00468, *Joint Application of Navitas KY NG, LLC and Gasco Distribution Systems, Inc. for Approval of an Acquisition of Ownership and Control of Gas Utility Systems* (Ky. PSC Feb. 11, 2011).

⁴ Application at 2.

⁵ Application at 6.

adoption of Johnson County's rates across both acquired systems due to the insufficient revenues of the B & H system. It further requests a unified Gas Cost Adjustment (GCA) and gas cost for the three companies in the combined system, including the existing Navitas KY system.

Navitas KY proposes to use its current accounting and billing practices across the combined system, and to integrate the assets of the current separate entities of Johnson County and B & H into the books of Navitas KY, billing all Kentucky customers on the same day and accounting for all Kentucky customers under a single entity.

Navitas KY requests that the Commission approve the assets acquired pursuant to the Agreement as net plant systems. Navitas KY proposes that the Commission approve a total net plant of \$660,000, which is the purchase price set out in the Agreement. Navitas KY proposes to finance the \$660,000 purchase price with 100 percent long term-debt, in the form of a 20-year note with 5 percent interest that will vary every 5 years.

The application further sets out Applicants' request that the Commission dismiss all ongoing litigation to which B & H and Johnson County are parties and to waive all refunds ordered and all fees and penalties assessed against the companies and Mr. Rife in connection with those proceedings.

The application requests that the Commission approve the adoption of Navitas KY's distribution integrity management plan, operations and maintenance plan, and emergency plan for the combined system after the transfer. It further requested that Navitas KY be granted a one-year forbearance for non-conformity with any approved plans in order to correct compliance documentation issues. In addition, it requested a

waiver of the inspection requirement for new meters or, in the alternative, for the Commission to send an inspector to review NALLC's facilities in Oklahoma.

Navitas KY requests approval for the asset acquisition to be financed using a similar financial structure to other NALLC acquisitions, with the debt portion provided by Bank 7 in similar terms and notes to Navitas KY's previous Kentucky notes.

DISCUSSION

Statutory Requirement for Transfer of Ownership and Control

KRS 278.020(6) provides that:

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.⁶

KRS 278.020(7) similarly provides that no entity "shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission." That statute further provides that the Commission "shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest."⁷

Applicants have provided information to support the claim that Navitas KY has the ability to provide reasonable service if the Commission approves its purchase of B & H and Johnson County from Mr. Rife. NALLC owns utility systems in Albany, Kentucky, Tennessee, Oklahoma, and Texas.⁸ The application asserts that NALLC companies are

⁶ KRS 278.020(6).

⁷ KRS 278.020(7).

⁸ Application at 4.

familiar with both federal and state utility regulations, and that they currently work closely with various state Commissions, including Kentucky, to maintain functional and compliant systems in the rural communities in which they operate.⁹

The Commission finds that the proposed transfer in this matter meets the standards set forth in KRS Chapter 278, as Navitas KY has the requisite financial, managerial, and technical expertise to own and operate the B & H and Johnson County Gas systems. The proposed transfer of B & H and Johnson County is in accordance with law, for a proper purpose and consistent with the public interest. Further, consolidating B & H and Johnson County with the existing gas utility system under the ownership and control of Navitas KY will likely result in greater economies of scale, reduce wasteful duplication of costs and efforts, and result in a greater degree of service.

Waiver of Fines and Penalties, Refund Requirements

In Case Nos. 2019-00055 and 2019-00056, the Commission assessed civil penalties totaling \$107,500 against B & H, Johnson County, and Bud Rife, individually, for violations of certain statutes, Commission Orders, and tariffs.¹⁰ B & H, Johnson County, and Bud Rife appealed the civil penalties to Franklin Circuit Court; that proceeding is currently being held in abeyance pending the proposed acquisition.¹¹

⁹ *Id.*

¹⁰ Case No. 2019-00055, *Electronic Investigation of B & H Gas Company, and Bud Rife, Individually and as an Officer of B & H Gas Company Alleged Violation of KRS 278.300* (Ky. PSC Aug. 19, 2019); and Case No. 2019-00056, *Electronic Investigation of Johnson County Gas Company, Inc. and Bud Rife, Individually and as an Officer of Johnson County Gas Company, Inc. Alleged Violation of KRS 278.300, a Commission Order, and a Tariff* (Ky. PSC Aug. 19, 2019). The Commission assessed a \$15,000 civil penalty against B & H; a \$7,500 civil penalty against Johnson County; a \$22,500 civil penalty against Bud Rife, individually; and a civil penalty of \$62,500 against Bud Rife and Johnson County, jointly.

¹¹ *B & H Gas Company v. Public Serv. Comm'n*, Franklin Circuit Court, Div. II, Civil Action No. 19-CI-00948 (Sept. 16, 2019).

In Case No. 2015-00367, the Commission required B & H to refund \$101,876 over 24 months to B & H customers for overcollection of the gas cost adjustment (GCA) component of billing, and required B & S Oil Company (B & S), an affiliate of B & H that is also solely owned by Bud Rife, to refund or credit to B & H any portion of the \$101,876 remitted to B & S by B & H, for B & S overcharging the wholesale gas price to B & H.¹² B & H and B & S appealed the decision to Franklin Circuit Court, which upheld the Commission's Order.¹³ B & H appealed the trial court decision to the Court of Appeals, where the matter is being held in abeyance pending the proposed acquisition.¹⁴

On February 1, 2021, the Commission issued an Order regarding Applicants' request that the Commission dismiss all ongoing litigation, including all fees, fines, and penalties, to which B & H and Johnson County are parties. The Commission stated its ability and willingness to consider suspending or waiving the civil penalties assessed against B & H, Johnson County, and Bud Rife if the transaction is consummated. It further found that it does not have discretion to waive the required refund of gas cost that it found to be unreasonable and that Navitas, B & H, and Johnson County must have a plan in place to refund the amount previously ordered in Case No. 2015-00367 to B & H's customers, and potentially to Johnson County's customers as a result of Case No. 2020-00122, as a condition precedent to the Agreement and to Commission approval of the proposed transaction.

¹² Case No. 2015-00367, *An Investigation of the Gas Costs of B & H Gas Company Pursuant to KRS 278.2207 and the Wholesale Gas Price It is Charged by Its Affiliate, B & S Oil and Gas Company, Pursuant to KRS 278.274* (Ky. PSC June 13, 2017).

¹³ *B & H v. Public Serv. Comm'n*, Franklin Circuit Ct., Div. I, Civil Action No. 17-CI-00722 (Apr. 2, 2020).

¹⁴ *B & H v. Public Serv. Comm'n*, Ky. Ct. App., No. 2020-CA-0604-MR (Nov. 30, 2020).

Applicants filed their response to the Commission's February 1, 2021 Order on February 18, 2021. The response stated that, as a condition precedent to the approval of the Agreement, Navitas KY would refund the required \$101,876 to B & H's customers and the undetermined amount to Johnson County's customers over a period of ten years. The response also included Navitas KY's proposal to delay filing a new rate case seeking to increase the current 2012 Johnson County rates until the completion of test case year 2022. The response further requested, as a condition subsequent to the approval of the Agreement, the Commission waive all of the civil penalties assessed against B & H, Johnson County, and Bud Rife.

In Case No. 2020-00122, the Commission investigated whether Johnson County overcollected the GCA billing component from its customers and whether Hall, Stephens, and Hall Gas Company (Hall), an affiliate for which Bud Rife is the managing partner, overcharged the wholesale gas price paid by Johnson County.¹⁵ On March 18, 2021, Commission Staff, Johnson County, and Hall entered into a Stipulation of Facts and Settlement Agreement, providing a refund of \$9,450 for over collection of GCA to Johnson County customers. By Order dated March 22, 2021, the refund mechanism for this amount is to be determined in this proceeding.

On April 7, 2021, Navitas KY filed supplemental testimony of Thomas Hartline, proposing a refund mechanism via a rider, meant to refund \$1.00 per month for 36 months to each continuous Legacy Customer of Johnson County Gas and \$6.80 per month for

¹⁵ Case No. 2020-00122, *Electronic Investigation of the Gas Costs of Johnson County Gas Company, Inc. and Hall, Stephens and Hall Gas Company Pursuant to KRS 278.2207, and KRS 278.274* (Ky. PSC Apr. 14, 2020).

60 months to each continuous Legacy Customer of B & H.¹⁶ Navitas KY defined “Legacy Customers” as customers of record on or before May 31, 2021.¹⁷ Pursuant to Navitas KY’s proposal, any new customers who connect after that date would not be eligible for the refund, and Legacy Customers who disconnect, voluntarily or for nonpayment, then later re-connect, would no longer be eligible for the refund thereafter.¹⁸ On April 14, 2021, during an Informal Conference Commission Staff conveyed to the Applicants that certain provisions would need to be included in the refund to the customers of Johnson County and B & H, including an annual accounting and true-up to ensure that the amount of refund that the Commission ordered was refunded; that Navitas provide an annual notice to customers regarding the refund; and that Legacy Customers who received service within the designated period would continue to be eligible to receive the refund even if they disconnected and reconnected their service during the refund period.¹⁹ On April 22, 2021, in its response to the April 14, 2021 Informal Conference, Navitas KY requested that the Commission cease consideration of its proposal to designate Legacy Customers as the sole recipients of the refunds, due to its inability to efficiently track such Legacy Customers who would drop off and later be reconnected to the system under the same customer status. Navitas further requested that the refund true-up be rolled into the GCA.²⁰

¹⁶ Supplemental Testimony of Thomas Hartline at 4.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Commission Staff IC Memo, April 14, 2021.

²⁰ Response to Informal Conference, April 22, 2021.

The Commission finds that Navitas KY shall be solely responsible for the refund for overcollection of the GCA billing component to B & H and Johnson County customers. Navitas KY's implementation of the refund via the proposed rider is approved insofar as the amounts and lengths of time the rider applies to the respective customers.

B & H Use of Johnson County Base Rates

Navitas KY does not propose any immediate changes to the rates, regulations, or conditions of service of Johnson County, and proposes that those same rates be used to bill the customers of B & H, if the rates determined in Case No. 2020-00364²¹ are higher than Johnson County's current rates. The Commission ordered that Case No. 2020-00364 be held in abeyance until this case is concluded. The Commission finds that because B & H can likely support rates that are higher than Johnson County's existing rates and Navitas KY requests to use the lower rates of Johnson County to reduce customer confusion and for ease of operations, B & H should use Johnson County's base rates. After Navitas KY provides the required notice of the closing of the acquisition, a final order will be issued in Case No. 2020-00396 setting forth the new rates. Navitas KY anticipates the current Johnson County rates will remain in effect for the acquired systems until consolidated with its other gas utility.

Net Plant Designation of Acquired Assets

Applicants propose to establish a net plant value for the acquired pipeline assets of \$660,000, composed of \$224,439 for B & H and \$435,561 for Johnson County, to match the purchase price and reflect Navitas KY's intention to systematically replace

²¹ Case No. 2020-00364, *Electronic Application of Navitas KY NG, Johnson County Gas Company, and B & H Gas Company for Approval of Acquisition, Transfer of Ownership, and Control of Natural Gas Utility Systems* (filed Dec. 28, 2020).

meters and trucks after the proposed acquisition, which will be allocated to Navitas KY from Navitas Utility Corporation (NUC).²² While the current net plant is \$120,475 for B & H and \$102,939 for Johnson County,²³ because the transaction is structured as an asset acquisition, the value of the acquired assets will match the purchase price. Applicants have proposed to base the net plant valuation on the replacement value of the pipeline as a going concern, adjusted for accumulated depreciation based on the assumed in service dates and useful lives. Applicants argue that this proposal is appropriate given the loss of actual plant records and the need to ensure sufficient net plant to support at least the current rates of the utilities.²⁴

In Case No. 9059²⁵, the Commission established criteria for recovering an acquisition adjustment in rates (Delta Test):

The Commission maintains its position that the net original cost of plant devoted to utility use is the fair value for rate-making purposes, unless the utility can prove, with conclusive evidence that the overall operations and financial condition of the utility have benefited from acquisitions at prices in excess of net book value. The burden of proof is upon the utility to justify its investment at the price in excess of net original cost based on economic and quality of service criteria. In order to meet this burden of proof, evidence must be submitted that shows that the purchase price was established upon arms-length negotiations, the initial investment plus the cost of restoring the facilities to required standards will not adversely impact the overall costs and rates of the existing and new customers, operational economies can be achieved through the acquisition, the purchase price of utility and non-utility

²² Applicants' Response to Commission Staff's First Request for Information (Staff's First Request), Item 23(c).

²³ Applicants' response to Staff's First Request, Item 23(d).

²⁴ Applicants' response to Staff's First Request, Items 1(a), and Applicants' Response to Commission's February 1, 2021 Order (filed Feb. 18, 2021), at 8.

²⁵ Case No. 9059, *An Adjustment of Rates of Delta Natural Gas Company, Inc.* (Sept. 11, 1985).

property can be clearly identified, and the purchase will result in overall benefits in the financial and service aspects of the utility's operations.

Applicants are unrelated parties and therefore have established that the purchase price was established at arm's-length. Navitas KY has stated that it does not anticipate filing a rate case before 2023.²⁶ Because B & H and Johnson County are currently operated as separate utilities, operational economies are expected from the acquisition. Additionally, the acquisition may achieve some economies of scale from administrative and operational activities performed by Navitas KY or Navitas Utility Corporation. The acquisition does not include non-utility property and the purchase price of the utility property is clearly identified.²⁷ The acquisition is expected to result in overall benefits in the financial and service aspects of the operation of B & H and Johnson County. The Commission expects Navitas KY's operation of these systems to reduce costs, improve safety, and increase regulatory compliance. Therefore, the Commission finds that Navitas KY has satisfied the requirements of the Delta Test and, based on the application of the Delta Test, it appears the full plant value will be recoverable in base rates. Navitas KY will have the burden of proof that the overall operations and financial condition of the utilities have benefited from acquisition at prices in excess of net book value.

Given the substantial benefits expected to accrue to B & H and Johnson County's customers if the proposed acquisition is completed, the Commission finds that it is appropriate to consider the valuation based on the replacement value as a going concern and will therefore accept the purchase price and net plant value of \$660,000.

²⁶ Applicants' Response to Staff's First Request, Item 6(a).

²⁷ Application, Exhibit F.

Gas Cost Adjustment Mechanisms and Gas Cost Issues

In the application, Navitas KY requested a unified GCA for the Navitas KY, Johnson County, and B & H systems following the acquisition.²⁸ On February 18, 2021, the applicants provided an amended request to approve two Kentucky GCA's and filings, one for south-central Kentucky and one for eastern Kentucky, following the transfer of ownership and control of the systems to Navitas KY. During the March 16, 2021, hearing the witness for Navitas KY, Thomas Hartline, expressed continued interest in establishing a unified GCA for all three systems if possible. Throughout the case, the applicants stated that they would prefer Commission guidance on implementation of a unified GCA mechanism.

The Commission approves the implementation of a unified GCA mechanism following the closure of the acquisition. The Commission finds that Navitas KY should file its first unified GCA report no later than July 2, 2021, for rates to be effective August 1, 2021. This filing will establish an Expected Gas Cost (EGC) for the combined system. The GCA rate report will include a combined EGC including all three utilities' expected gas cost with a list of suppliers, the expected rates, and 12 months of historical Mcf sales and purchase volume information for the combined system for the reporting period. Along with this GCA report, Navitas KY shall file the finalized and executed gas purchase contracts between the suppliers controlled by Bud Rife and Navitas KY. The Commission finds that the gas purchase contracts filed in the application conflicts with the testimonies provided by the Applicants during the March 16, 2021 hearing. The Commission relies on testimony made during the hearing that the contracts will be based on amounts and

²⁸ Application at 8.

methodologies approved by the Commission for Johnson County and B & H, both of which have incorporated an element of the NYMEX for determining their gas costs, in the Settlement Agreement's use of the Diversified Gas and Oil Corporation's rate for Johnson County, and the pricing formula required by the Commission for B&H in Case No. 2015-00367. Following the filing of the unified GCA report, the Commission will rule upon the reasonableness of the gas cost proposed in that case. Additionally, the unified GCA report should include any invoices received from the gas suppliers for each month following the acquisition, plus all other gas purchase invoices received by each of the Navitas KY systems in the remainder of the 12-month ended reporting period.

The unified GCA report will include only the combined system's EGC in the calculation of the GCR rate. The subsequent Actual Cost Adjustment (ACA) and Balancing Adjustment (BA) will be implemented in future unified GCA filings. The first Actual Cost Adjustment to track under- and over-recoveries for the combined system will be included in Navitas KY's GCA report for rates effective February 1, 2022.

As the existing Navitas KY system, Johnson County and B & H each have their own GCA mechanisms through which they track under- and over-recoveries of gas cost. Navitas KY should continue to charge customers of each of those systems a tracker specific to each specific utility to reconcile any remaining under- and over-recoveries of past gas cost. Those individual tracking adjustments, to be charged to customers in the three systems until the final reconciliation of past gas cost is complete, will be established in Navitas KY's GCA report for rates effective November 1, 2021, which should be filed no later than October 2, 2021. Until the approval of the unified GCA report effective August 1, 2021, the GCR rates approved for the existing Navitas KY system in its pending

case,²⁹ Johnson County in Case No. 2021-00101,³⁰ and B & H in Case No. 2021-00100³¹ should continue to be charged to their respective customers.

The Commission finds that the unified GCA report format should be based on the current GCA report used by Johnson County and contained in its tariff, with the exception of the calendar quarters and reporting periods, which should be the same as those of the current Navitas KY tariff. Navitas KY should use the calculation methodology for quarterly Gas Cost Recovery Rate Calculations, which is found on the Commission's website under Utility Information specific to natural gas utilities. This format and methodology has become standard for small gas Local Distribution Companies in Kentucky and is the preferred format.

Forbearance for One Year for Non-conformity with Approved Plans

Navitas KY has requested Commission approval of its Distribution Integrity Management Plan (DIMP), Operations and Maintenance (O&M) Plan, and Emergency Plan for the combined system after the transfer.

In the application, Navitas explains that NUC, the operator of each of the Navitas local distribution companies, has a unified DIMP, unified O&M Manual, and unified Emergency Plan across all of the Navitas KY systems and its required five-year review of these plans is scheduled for 2021, using 2020 data.³² It is Navitas KY's intent to

²⁹ Case No. 2021-00136, *Electronic Purchased Gas Adjustment Filing of Navitas KY NG, LLC* (filed March 26, 2021).

³⁰ Case No. 2021-00101, *Electronic Purchased Gas Adjustment Filing of Johnson County Gas Company, Inc.* (Ky. PSC Mar. 31, 2021).

³¹ Case No. 2021-00100, *Electronic Purchased Gas Adjustment Filing of B & H Gas Company, Inc.* (Ky. PSC Mar. 31, 2021).

³² Application at 12-13.

incorporate the B & H and Johnson County systems in their review and the subsequent inspection audit of these plans in 2021.³³ While Navitas KY performed a field due diligence study, which did not indicate any major issues with B & H or Johnson County, it avers it will take some time to change and modify all the practices and methodologies to conform with the Navitas KY O&M Manual.³⁴ Navitas KY, therefore, is seeking citation forbearance for one year for non-conformity with its approved Plan or the outgoing Plan currently in place and the parties request that the assets acquired under the Agreement adopt the Navitas KY DIMP, O&M plan, and emergency plan and provide Navitas KY with one year to correct any compliance documentation issues.³⁵

The Commission finds that Navitas KY's DIMP, O&M, and emergency plans are approved. Navitas KY has evidenced its intent to bring the B & H and Johnson County systems into compliance with its plans, and therefore, the Commission further finds that Navitas KY should be granted a one-year forbearance to bring the B & H and Johnson County systems into compliance with the Navitas KY DIMP, O&M, and emergency plans.

Meter Testing Requirements

Pursuant to Commission regulations, inspection of meter proving shops is required for all gas utilities furnishing metered service in Kentucky.³⁶ Navitas KY states that the remote location of its meter shop at its operational headquarters in Eakly, Oklahoma, is an impediment to this requirement.³⁷ Since 2012, Navitas KY and the Commission have

³³ *Id.* at 13.

³⁴ *Id.*

³⁵ *Id.*

³⁶ 807 KAR 5:006, Section 17 (1).

³⁷ Application at 13.

operated under an agreement whereby Navitas KY only places new meters in Albany, Kentucky, redeploing meters from Kentucky to other locations after they are tested and rebuilt.³⁸ With the addition of 500 small meters expected as a result of this transfer, Navitas has requested a waiver of the inspection requirement or, in the alternative, that the Commission dispatch an inspector to review Navitas KY's facilities in Oklahoma.³⁹

The Commission finds it will grant the same agreement herein that Navitas KY is currently operating under for its Albany, Kentucky, system, so long as Navitas KY places only new meters in the B & H and Johnson County systems. However, the Commission also finds that Navitas KY may remain subject to the inspection requirements, especially if at any time is redeploys rebuilt meters from its Oklahoma-based meter testing shop.

Navitas KY has also requested to self-certify one or more of its employees to become certified meter testers pursuant to the Commission's July 17, 2018 Order in Case 2018-00226.⁴⁰ Specifically, Navitas KY seeks to pursue the Commission's Order as it pertains to meter testing certification under 807 KAR 5:006, Section 17(4): "The Commission finds that a utility or third-party operator of a meter-testing facility may self-certify as a meter tester an employee who receives documented training regarding meter shop practices, proper meter-testing procedures, and Commission regulations applicable to meter testing. The Commission further finds that each utility and third party performing

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Case No. 2018-00226, *Notification to Utilities Furnishing Metered Electric, Gas or Water Service Regarding Meter Testing Requirements* (Ky. PSC July 17, 2018).

meter testing for a utility should be responsible for maintaining current documentation of training for each employee performing meter tests for a utility.”⁴¹

In its Response to Commission Staff’s Post-Hearing Request for Information, Navitas KY provided a copy of its Meter Testing Manual. Therein, it states, “Meter shop personnel should attend proper manufacturer workshops, participate in hands on classes and training courses, and thoroughly read and review owner’s manuals.”⁴² The Commission finds that Navitas KY should retain documentation to provide proof of such training by its employees to comply with the July 17, 2018 Order in Case 2018-00226.

Special Circumstances

Several items included in the Applicants’ proposed acquisition are novel requests before the Commission or contradict Commission precedent. In particular, letting B & H use Johnson County’s rates prior to a unifying rate case, approving the use of replacement value as a going concern for ratemaking, forbearance of inspection items, and the unique construction of the refund. Additionally, the Commission usually applies the Delta Test in a rate case proceeding involving the recovery of the acquisition premium. The Commission is only granting these exceptional proposals because of the unique instance before us. The Commission believes that a change in ownership will provide long-term benefits to customers because of Mr. Rife’s unwillingness to follow statutes, regulations, and Commission Orders and that the proposed acquisition is the customers’ best option to receive their refund and have a sustainable system.

⁴¹ *Id.*

⁴² Navitas KY’s response to Commission Staff’s Post-Hearing Request for Information, Exhibit B, at 18.

FINDINGS

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. The Commission previously approved in Case No. 2010-00468⁴³ the acquisition of the system formerly known as Gasco Distribution Systems, Inc. by Navitas KY.

2. B & H, a Kentucky corporation, owns and operates facilities that distribute and furnish natural gas to approximately 250 customers in Floyd County, Kentucky.

3. Johnson County, a Kentucky corporation, owns and operates facilities that distribute and furnish natural gas to approximately 270 customers in Johnson County, Kentucky.

4. Navitas KY, a Kentucky limited liability company, is authorized to conduct business in Kentucky.

5. Navitas KY has entered into an Agreement with Bud Rife, the owner of B & H and Johnson County, to purchase their assets.

6. The Agreement defines the assets to include the utility pipeline, meters, trucks, easements, maintenance equipment, and office equipment. Assets do not include the current office building.

7. Navitas KY proposes to purchase B & H and Johnson County using 100 percent long-term debt in the form of a 20-year note with 6 percent interest that will

⁴³ Case No 2010-00468, *Joint Application of Navitas KY NG, LLC and Gasco Distribution Systems, Inc. for Approval of an Acquisition of Ownership and Control of Gas Utility Systems* (Ky. PSC Feb. 11, 2011).

vary every 5 years, which has been submitted for review and approval in Case No. 2021-00153.⁴⁴

8. Navitas management has extensive experience in the operation and management of gas pipeline and distribution systems.

9. Consolidating B & H and Johnson County with the existing gas utility system under the ownership and control of Navitas will likely result in greater economies of scale, reduce wasteful duplication of costs and efforts, and result in a greater degree of service.

10. The proposed transfer in this matter meets the standards set forth in KRS Chapter 278.

11. Navitas KY should be solely responsible for the refund for overcollection of the GCA billing component to B & H and Johnson County customers.

12. Navitas KY's refund for over collection of the GCA billing component to B & H and Johnson County customers should be implemented via the proposed rider, to refund \$1.00 per month for 36 months to customers of Johnson County Gas and \$6.80 per month for 60 months to customers of B & H.

13. The Commission has found that B & H can support rates that are higher than Johnson County's existing rates; therefore, Navitas KY's request for B & H to use Johnson County's base rates for service rendered on and after the closing date of the proposed acquisition should be approved.

14. Navitas KY does not propose any immediate changes to the rates, regulations, or conditions of service of Johnson County, and proposes that those same

⁴⁴ Case No, 2021-00153, *Electronic Application of Navitas KY NG, LLC for Approval of Long-Term Financing Plan for the Acquisition of Johnson County Gas Company and B&H Gas Company* (filed April 5, 2021).

rates be used to bill the customers of B & H as well. As previously stated, Navitas KY anticipates the current Johnson County rates will remain in effect for the acquired systems until consolidated with its other gas utility.

15. The valuation of net plant based on the replacement value of \$660,000 should be approved.

16. A unified GCA for the Navitas KY, Johnson County, and B & H systems following the acquisition is reasonable and should be approved.

17. Navitas KY should file its first unified GCA report, including its finalized and executed gas purchase contracts, no later than July 2, 2021 for rates to be effective August 1, 2021.

18. Until the approval of the unified GCA report effective August 1, 2021, the GCR rates approved for Navitas KY in Case No. 2021-00136, Johnson County in Case No. 2021-00101, and B & H in Case No. 2020-00381 should continue to be charged to their respective customers.

19. The unified GCA report format should be based on the current GCA report used by Johnson County.

20. Navitas KY's DIMP, O&M, and Emergency Plans should be approved and Navitas KY should be granted a one-year forbearance to bring the B & H and Johnson County systems into compliance with the Navitas KY DIMP, O&M, and emergency plans.

21. The agreement Navitas KY is currently operating under for its Albany, Kentucky, system, regarding inspection of its meter testing facilities, is also reasonable for the B & H and Johnson County systems, given that Navitas KY places only new meters in those systems.

22. Navitas KY remains subject to the inspection requirements under 807 KAR 5:006, Section 17.

23. The relief granted herein is the product of careful consideration of the unique circumstances surrounding the acquired utilities. Due to the specific issues with Mr. Rife's operation of the utilities, the Commission has exercised leniency that, absent these extreme circumstances, would not be allowed.

IT IS THEREFORE ORDERED that:

1. Navitas KY's proposed acquisition of the assets of B&H and Johnson County is approved.

2. Commission authorization of the proposed acquisition of the assets of B & H and Johnson County is effective for one year from the date of this Order and shall lapse if not completed within this period.

3. Within 10 days of completion of the transfer of assets as approved, Navitas KY shall notify the Commission in writing of the completion thereof.

4. Within 10 days of the completion of the approved acquisition, Navitas KY shall file a signed and dated adoption notice in accordance with 807 KAR 5:011, Section 11.

5. Within 10 days of the filing of such adoption notice, Navitas KY shall issue and file with the Commission in its own name the utility's tariff, or such other tariff as it proposes to put into effect in lieu thereof in the form prescribed in 807 KAR 5:011, Section 11.

6. Within 20 days of the completion of the proposed transfer, Navitas KY shall file the journal entries it proposes to record the approved acquisition. The acquisition shall be recorded in accordance with the Uniform System of Accounts.

7. Nothing in this Order shall be construed as authorizing rat-making treatment of any cost or expense associated with the proposed acquisitions of control in Navitas KY's general rates. These issues are deferred until Navitas KY's next rate case proceeding.

8. B & H and Johnson County, as they cease to exist as a result of the proposed acquisition by Navitas KY, shall be responsible for submitting to the Commission their financial and statistical reports, as described in 807 KAR 5:006, Section 3, for the period in calendar 2021 in which they owned and operated their natural gas distribution systems.

9. Upon completion of the transfer, Navitas KY is solely responsible for the refund of the overcollection of the GCA billing component to B & H and Johnson County customers, to be accomplished as set out herein.

10. This case is closed and removed from the Commission's docket.

By the Commission



ATTEST:


Executive Director

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