

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 8, 2011

IN RE:

**PETITION OF NAVITAS TN NG, LLC
FOR EMERGENCY RELIEF FOR
NATURAL GAS RATES**

**DOCKET NO.
11-00060**

**ORDER GRANTING CONSUMER ADVOCATE'S PETITION TO INTERVENE
AND REFLECTING ACTION TAKEN AT JUNE 6, 2011 STATUS CONFERENCE**

This matter came before Chairman Mary W. Freeman, Director Kenneth C. Hill and Director Sara Kyle, of the Tennessee Regulatory Authority ("Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on May 9, 2011 for consideration of the *Petition for Emergency Relief* ("*Petition*") filed by Navitas TN NG, LLC. During that Conference, the panel voted unanimously to convene a contested case proceeding and to appoint a Hearing Officer for the purpose of preparing this matter for hearing, including handling preliminary matters and establishing a procedural schedule to completion. The panel also voted unanimously to suspend the effective date of the proposed tariff filed with the *Petition* for ninety (90) days, from May 20, 2011 through August 18, 2011.

BACKGROUND

On April 20, 2011, Navitas TN NG, LLC ("Navitas" or the "Company") filed its *Petition* in which the Company is requesting as emergency relief Authority approval to apply new service charges to all customer classes. In the *Petition*, Navitas alleges that upon acquiring the natural

gas distribution system from Gasco Distribution Systems, Inc. (“Gasco”),¹ Navitas adopted Gasco’s existing tariffs for its natural gas operations.² As a result, Navitas anticipates that it will be operating at a revenue deficiency and seeks the imposition of a customer charge that should reduce the projected annual deficiency from \$159,000 to \$62,000.³ Navitas anticipates filing a full rate case in early 2012 upon operating the system and obtaining accurate and complete data regarding the system for a complete twelve (12) month period.⁴ Navitas requests that the Authority not require a bond and that the emergency relief be effective upon approval.

On May 5, 2011, the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”) filed a *Petition to Intervene*. The Consumer Advocate seeks intervention in this docket “to investigate the need for the relief sought by Navitas and the potential impact on Tennessee consumers under Navitas’s proposal.”⁵ TRA Staff sent Data Requests to Navitas on May 25, 2011, with a response date of June 13, 2011.

STATUS CONFERENCE

A Notice of Status Conference was issued on May 26, 2011 setting a Status Conference for Monday, June 6, 2011. The Notice provided that any interested party desiring to participate in the Status Conference should file a petition to intervene no later than June 2, 2011 and that petitions to intervene filed by that date would be considered at the Status Conference on June 6, 2011. The Notice also stated that the establishment of a procedural schedule and discovery between the parties would be matters for discussion during the Status Conference.

¹ In Docket No. 10-00220, the Authority approved the transfer of control of and agreements related to Gasco’s gas utility systems providing retail service to customers in Jellico, Campbell County, Byrdstown, Pickett County and Fentress County, Tennessee, and White County, Kentucky. See *Joint Petition of Navitas TN NG, LLC and Gasco Distribution Systems, Inc. for Approval of a Transfer of Control and Authority of Gas Utility Systems of Gasco Distribution Systems, Inc., Chapter 11 Debtor in Possession*, Docket No. 10-00220, *Order Approving Transfer of Control and Approving Transfer of Franchise Agreements and Financing Transactions* (December 30, 2010).

² *Petition for Emergency Relief*, p. 2 (April 20, 2011).

³ *Petition*, pp. 2-3.

⁴ *Petition*, p. 3.

⁵ *Petition to Intervene*, p. 2 (May 5, 2011).

The Status Conference was convened on June 6, 2011. In attendance at the Status Conference were the following parties represented by counsel:

Navitas TN NG, LLC – **Klint Alexander, Esq.**, Wyatt, Tarrant & Combs, LLC, 2525 West End Avenue, Suite 1500, Nashville, TN 37203 and **Ron Comingdeer, Esq.**, Ron Comingdeer & Associates, 6011 North Robinson Avenue, Oklahoma City, OK 73118-7425 (appearance by telephone). **Thomas Hartline**, President of Navitas, was also present.

Consumer Advocate and Protection Division - **Vance Broemel, Esq.** and **Ryan McGehee, Esq.**, Office of the Attorney General, 425 5th Ave. N, John Sevier Building, P.O. Box 20207, Nashville, TN 37202.

Petition to Intervene

At the outset of the Status Conference, the Hearing Officer considered the *Petition to Intervene* filed by the Consumer Advocate. Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

- (a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if;
 - (1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;
 - (2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and
 - (3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

Further, Tenn. Code Ann. § 65-4-118 grants specific authority to the Consumer Advocate to participate on the behalf of Tennessee consumers in proceedings before the Authority. Under TRA Rule 1220-1-2-.06, any party opposing a motion in a contested case must file and serve a response to the motion within seven days of service of the motion. No opposition to the Consumer Advocate's petition was filed or expressed at the Status Conference.

Applying the standards set forth in Tenn. Code Ann. § 4-5-310(a), the Hearing Officer granted the Consumer Advocate's *Petition to Intervene* during the Status Conference. In granting the petition, the Hearing Officer finds that the legal rights and interests of Tennessee consumers may be determined in this proceeding; that the petition to intervene is timely; and the intervention of the Consumer Advocate will not impair the orderly and prompt conduct of these proceedings.

Procedural Schedule

Prior to the Status Conference, the parties did not meet for the purpose of developing a procedural schedule for this docket. The parties were requested during the Status Conference to work together to submit a joint procedural schedule. If the parties cannot reach an agreement and are unable to submit a joint procedural schedule by **Friday, June 10, 2011**, then the parties shall submit separate proposed procedural schedules on **June 10, 2011** which will be considered by the Hearing Officer. The proposed procedural schedule(s) should reflect an expeditious proceeding given that the *Petition* seeks emergency relief.

Protective Order

On May 27, 2011, the parties submitted a proposed Protective Order. Upon review, the Hearing Officer determined that the proposed Protective Order required certain revisions. In discussing these revisions with the parties during the Status Conference, it was determined that paragraphs 11, 27 and 28 would be deleted and that language in paragraphs 18 and 23 would be revised in a new proposed Protective Order. The parties were also asked to work together in substituting certain language in a new proposed Protective Order. The parties should submit the proposed Protective Order to the Hearing Officer no later than **Friday, June 10, 2011**.

Discovery Matters

During the Status Conference, the Consumer Advocate stated that it had already entered

into some informal discovery with Navitas through conversations between the parties. The Consumer Advocate stated that after it had an opportunity to review the responses of Navitas to the TRA Staff Data Requests, it would make a determination as to whether it needed and would propound its own discovery requests. The Hearing Officer reminds the parties that TRA Rule 1220-1-2-.11(5)(a) limits discovery requests to forty requests in the absence of an order authorizing additional discovery requests.

Micellaneous Matters

During the Status Conference, Mr. Hartline stated that he had been working on responses to the TRA Staff Data Requests sent on May 25, 2011. Mr. Hartline stated that certain questions in the Data Requests did not apply to Navitas and would point those out in Navitas's responses. Mr. Hartline advised that he would provide responses to TRA Staff as he completed those responses and that he anticipated being able to provide responses to all applicable questions by June 17, 2011. Following the Status Conference, Mr. Hartline met with members of TRA Staff and the Consumer Advocate's office to discuss the TRA Staff Data Requests.

Navitas's *Petition* was filed without any supporting pre-filed testimony. Counsel for Navitas agreed to submit pre-filed testimony by **June 17, 2011**.

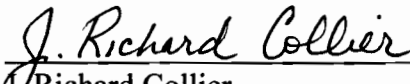
IT IS THEREFORE ORDERED THAT:

1. The Consumer Advocate and Protection Division, Office of the Attorney General, is granted leave to intervene and receive copies of any notices, orders or other documents herein.
2. The parties shall submit a joint procedural schedule no later than **Friday, June 10, 2011** for review by the Hearing Officer. In the event that an agreement cannot be

reached, the parties shall each submit a separate proposed procedural schedule on **Friday, June 10, 2011.**

3. The parties shall submit a revised Agreed Protective Order no later than **Friday, June 10, 2011.**

4. Navitas will submit pre-filed testimony in support of its *Petition* on **Friday, June 17, 2011.**



Richard Collier
Hearing Officer