

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**PETITION OF NAVITAS TN NG, LLC** )  
**FOR APPROVAL OF NEGOTIATED** )  
**FRANCHISE AGREEMENT WITH THE** )  
**CITY OF JELICO, TENNESSEE** ) **Docket No. 12-00011**  
**PURSUANT TO TENNESSEE CODE** )  
**ANNOTATED § 65-4-107** )  
)

**PETITION**

COMES NOW, Petitioner Navitas TN NG, LLC (“Navitas”), by and through counsel, pursuant to Tennessee Code Annotated § 65-4-107, and hereby requests approval by the Tennessee Regulatory Authority (“Authority”) of a negotiated franchise agreement between Navitas and the City of Jellico, Tennessee (“Jellico”). In support of this Petition, Navitas shows unto the Authority as follows:

1. Navitas is a Tennessee limited liability company with its principal place of business located at 18218 East McDermott, Irvine, California 92614. Navitas maintains its local office at 613 Sunset Trail, Jellico, TN and 9825 Hwy 111, Static, TN. Navitas is in the business of distributing and selling natural gas to customers in the States of Tennessee and Kentucky.

2. Navitas’ natural gas distribution business is subject to regulation and supervision by the Authority pursuant to Chapter 4 of Title 65 of the Tennessee Code Annotated.

3. On December 30, 2010, an Order was entered by the Authority for Docket No. 10-00220 approving the transfer of control and authority of the utility systems of Gasco Distribution Systems, Inc. (“Gasco”) to Navitas to provide utility services deriving from its Certificate of Public Convenience and Necessity in Jellico, Campbell County, Byrdstown, Pickett County and Fentress County, Tennessee and Whitley County, Kentucky pursuant to

Tenn. Code Ann. § 65-4-113. A true and exact copy of the December 30, 2011 Order is attached hereto as **Exhibit A.**

4. Among other things, the December 30, 2010 Order from the Authority also approved, pursuant to Tenn. Code Ann. § 65-4-113, the assignments of certain franchise agreements to Navitas, including the agreements between Gasco and the City of Byrdstown, Gasco and Pickett County and Gasco and the City of Jellico, to provide utility services in Byrdstown, Pickett County and Jellico, Tennessee,. respectively, pursuant to Tenn. Code Ann. § 65-4-107.

5. On October 20, 2011, An Ordinance (No. 90-2011) Granting a Franchise to Navitas was approved and executed by the Board of Aldermen and Mayor Les Stiers of the City of Jellico, Tennessee. This franchise revised previously enacted Ordinance No. 4-87 to enable Navitas to install, maintain and use facilities in, through, along or under City rights-of-way and other real property in order to provide natural gas services to residents and business owners throughout the City and adjoining service area. A copy of the duly executed Ordinance No. 90-2011 Granting a Franchise agreement is attached hereto as **Exhibit B.**

6. The new franchise agreement generally provides as follows:

- a. a twenty-five (25) year term arrangement which secures the provision of natural gas service to citizens, businesses and governmental institutions within Jellico;
- b. enables Navitas, an established provider of natural gas service, to install, maintain and use facilities in, through, along or under City rights-of-way and other real property in order to provide natural gas services to residents and business owners throughout the City and adjoining service area;

c. Navitas shall pay the City an initial franchise fee of Five Thousand Dollars (\$5,000.00) payable within sixty (60) days of the Effective Date of the Ordinance and, additionally, a Two and One-half Percent (2.5%) regular franchise fee each quarter based on annual gross operating revenues during the preceding quarter from the sale of gas through Navitas' distribution system within the City of Jellico.

7. Navitas submits that the franchise agreement contained in Ordinance No. 90-2011 is necessary and proper for the public convenience and properly serves the public interest on at least the following grounds:

- (a) The franchise terms reflected in Ordinance 90-2011 will establish a twenty-five year arrangement through which the current and future residents, business enterprises and governmental facilities located within the City of Jellico and surrounding service area will be able to receive, under the supervisory jurisdiction of the Authority, the benefits of natural gas service provided by Navitas. This arrangement will help ensure the continuing availability of high quality natural gas service to Navitas for the foreseeable future.
- (b) The franchise facilitates the provision of such natural gas service to Jellico by an established and proven provider of that service well-known to this Authority and possessing the requisite expertise, facilities, systems and gas supply and transportation assets necessary to provide such service.
- (c) The new franchise arrangement establishes adequate and proper mechanisms for access by Navitas to public rights of way, new and existing customers, and existing service lines, transmission and

distribution facilities. These mechanisms help to ensure that Navitas is able to provide both adequate and efficient service and to comply with the requirements of this Authority to ensure the safety and protection of residents and property within Jellico and the surrounding area.

- (d) The new franchise arrangement provides an incentive for Navitas to invest in infrastructure needed to provide improved and expanded service within Jellico by ensuring that Navitas will have the right to provide service within these areas for a sufficient period in order to permit Navitas the opportunity to recover the capital investment in such facilities under the rates approved by the Authority.

The testimony of Thomas Hartline, in support of these factors and the Jellico franchise in general, is affixed hereto as **Exhibit C**.

8. Pursuant to Tennessee Code Annotated § 65-4-107, the franchise agreement between Navitas and Jellico must be approved by the Authority in order to be valid. Such approval is proper where, as here, the franchise is necessary and proper for the public convenience and properly serves the public interest.

**WHEREFORE**, Petitioner Navitas TN NG LLC respectfully requests that the Authority enter a final order as follows:

1. Finding that the Franchise Agreement entered into between The City of Jellico and Navitas TN NG LLC and approved and passed by Ordinance Number 90-2011 on or about October 20, 2011 is approved.

2. Granting all other necessary or appropriate authorizations and further relief.

Dated this the 6<sup>th</sup> day of February, 2012.

Respectfully submitted,

  
\_\_\_\_\_  
Klint W. Alexander (#20420)  
**Wyatt, Tarrant & Combs, LLP**  
2525 West End Avenue, Suite 1500  
Nashville, TN 37203  
(615) 244-0020  
[kalexander@wyattfirm.com](mailto:kalexander@wyattfirm.com)  
[kwalkup@wyattfirm.com](mailto:kwalkup@wyattfirm.com)

- and -

Ron Comingdeer, OBA#1835  
Mary Kathryn Kunc, OBA#15907  
Ron Comingdeer & Associates  
6011 N. Robinson  
Oklahoma City, Oklahoma 73118  
(405) 848-5534  
[hunter@comingdeerlaw.com](mailto:hunter@comingdeerlaw.com)  
[mkkunc@comingdeerlaw.com](mailto:mkkunc@comingdeerlaw.com)

*Counsel for Petitioner*  
*Navitas TN NG LLC*

VERIFICATION OF NAVITAS TN NG, LLC

STATE OF California )  
 )  
COUNTY OF Orange ) ss.

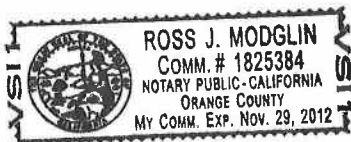
I Thomas Hartline, Secretary of Navitas TN NG, LLC, being duly sworn according to law, makes oath and affirm that I have read the foregoing documentation, know the contents thereof, and that the same is true and correct to the best of my knowledge, information and belief.

  
THOMAS HARTLINE

Subscribed and sworn to me, a Notary Public in and for the above County and State, on this 2<sup>nd</sup> day of February, 2012.

  
NOTARY PUBLIC

My Commission Expires:



## **LIST OF EXHIBITS**

- Exhibit A      Copy of the December 30, 2010 Order of the Authority.
- Exhibit B      The City of Jellico and Navitas have entered into a Franchise Agreement by Ordinance Number 90-2011("Franchise Agreement"). A copy of the duly executed Franchise Agreement
- Exhibit C      Testimony of Thomas Hartline

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 6<sup>th</sup> day of February, 2012, a true and correct copy of the foregoing instrument was deposited in the United States Mail, with postage prepaid, and addressed to the following:

**Jean A. Stone, Esq.**

General Counsel  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

**Terry M. Basista, Esq.**

City Attorney  
PO Box 436  
Jacksboro, Tennessee 37757

**Vance L. Broemel, Esq.**

Senior Counsel  
Consumer Advocate and Protection Division  
State of Tennessee, Office of Attorney General  
John Sevier Building  
PO Box 20207  
500 Charlotte Avenue  
Nashville, Tennessee 37202

  
\_\_\_\_\_  
Klint Alexander



**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**December 30, 2010**

**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**

---

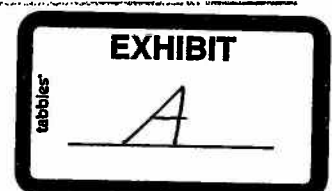
**ORDER APPROVING TRANSFER OF CONTROL AND APPROVING TRANSFER OF  
FRANCHISE AGREEMENTS AND FINANCING TRANSACTIONS**

---

This matter came before Chairman Mary W. Freeman, Director Eddie Roberson and Director Sara Kyle of the Tennessee Regulatory Authority ("Authority" or "TRA"), the voting panel assigned to this docket, at a specially scheduled Authority Conference held on December 20, 2010 for consideration of the *Joint Petition* and the *Amendment to the Joint Petition* ("*Amendment*") filed on November 17, 2010 and December 10, 2010, respectively, of Navitas TN NG, LLC ("Navitas") and Gasco Distribution Systems, Inc. ("Gasco") (collectively, the "Petitioners"). The Petitioners seek Authority approval of: (1) the transfer of control of gas utility systems of Gasco to provide retail gas utility services in Jellico, Campbell County, Byrdstown, Pickett County and Fentress County, Tennessee and Whitley County, Kentucky<sup>1</sup> deriving from the Certificate of Public Convenience and Necessity issued by the Authority's predecessor, the Tennessee Public Service Commission and related orders, approvals, and actions of the Authority of its predecessor; (2) the transfer of franchise agreements including the agreements between Gasco and the City of Byrdstown, Gasco and Pickett

---

<sup>1</sup> By Order of the Public Service Commission Commonwealth of Kentucky, dated August 13, 1990, Gasco Distribution Systems, Inc.'s service to Kentucky residents in Kentucky Hill and Black Oak in Whitley County, Kentucky is effective under the jurisdiction of the Authority, as part of the Jellico Distribution System.



County and Gasco and the City of Jellico, to provide utility services in Jellico, Byrdstown, and Pickett County, Tennessee and (3) the financing arrangements of Navitas.

**THE JOINT PETITION**

According to the *Joint Petition*, Gasco owns and operates the natural gas distribution systems known as 1) the Jellico System located in Campbell County, Tennessee and Whitley County, Kentucky; 2) the Byrdstown System located in Pickett County, Tennessee; 3) the Fentress System located in Fentress County, Tennessee, and 4) the Albany System located in Clinton County, Kentucky. On June 1, 2009, Gasco filed for Chapter 11 bankruptcy protection – Case No. 09-056171 - in the United States Bankruptcy Court (“Bankruptcy Court”) for the Southern District of Ohio, Eastern Division. Gasco has been operating as a Debtor in Possession since that time.

By Agreement dated July 9, 2010 and amended on October 14, 2010, Gasco agreed to sell, and Navitas Assets, LLC (“NALLC”) agreed to purchase the assets in Gasco’s gas utility system subject to the approval of the Authority and to the Bankruptcy Court’s approval. On October 21, 2010, the Bankruptcy Court entered an Order authorizing and approving NALLC’s bid to acquire the Jellico System, the Byrdstown System, the Fentress System, and the Albany, Kentucky System. A Corporate Resolution of NALLC assigned all rights and privileges under the Asset Purchase Agreement to Navitas.

According to the *Joint Petition*, NALLC and Navitas Utility Corporation (“NUC”) are sister entities. NALLC is a holding company created to retain certain energy assets. Navitas is a Tennessee Limited Liability Company. NALLC is the parent company of Navitas and the Fort Cobb Fuel Authority, LLC (“FCFA”), a regulated natural gas utility in Oklahoma. NUC is an operating entity primarily engaged in providing necessary support services for the operations of NALLC. According to the *Joint Petition*, the Navitas companies have the requisite managerial and technical

expertise to own and operate the existing Gasco Utility Systems.<sup>2</sup> The Petitioners state that (1) NALLC, the parent company of Navitas, owns and operates Fort Cobb Fuel Authority, a regulated natural gas utility in Oklahoma serving over 4,000 customers; (2) NALLC is familiar with federal and state utility regulations and has worked with the Oklahoma Corporation Commission and the Federal Energy Regulatory Commission (FERC); and (3) Navitas expects to retain the current employees of Gasco to continue servicing the system.<sup>3</sup>

The *Joint Petition* states that NALLC has the requisite financial stability to operate the purchased Gasco system.<sup>4</sup> To support this statement, NALLC submitted copies of its 2009 Federal and State Income Tax Returns and Independent Auditor's Report.<sup>5</sup>

As stated in the *Joint Petition*, Navitas initially intends to adopt the current tariffs on file for Gasco and will abide by all TRA Rules.<sup>6</sup> Navitas, however, recognizes that the current tariff rates may not be adequate to produce a fair and reasonable return and has indicated that it intends to file a rate case to increase rates in the future.

#### **THE AMENDMENT TO THE JOINT PETITION**

In December 2009, the owners of NALLC secured a USDA B&I Rural Development loan for the purpose of acquiring natural gas properties, such as the Gasco properties located in Tennessee. When the loan was approved, a \$1.5 million acquisition line was put in place for future use. Navitas intends to draw down \$610,500 to pay for the Gasco properties located in Tennessee. A requirement of the loan documents is that all properties, including the Gasco properties, purchased with loan funds are pledged as security for the loan. Additionally, the owners, Mr. Richard Varner and Mr. Thomas Hartline, are guarantors for the loan.

---

<sup>2</sup> *Joint Petition*, p. 4.

<sup>3</sup> *Id.* at 7.

<sup>4</sup> *Id.* at 6.

<sup>5</sup> *Id.* at Confidential Exhibit I.

<sup>6</sup> *Id.* at 7-8.

## FINDINGS AND CONCLUSIONS

Tenn. Code Ann. § 65-4-113(a) (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services and provides:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, which in pertinent part, states as follows:

Upon application for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

Regarding the proposed financing transaction, Tenn. Code Ann. § 65-4-109 (2004) provides:

No public utility shall issue any stocks, stock certificates, bonds, debentures, or other evidences of indebtedness payable in more than one (1) year from the date thereof, until it shall have first obtained authority from the authority for such proposed issue. It shall be the duty of the authority after hearing to approve any such proposed issue maturing more than one (1) year from the date thereof upon being satisfied that the proposed issue, sale and delivery is to be made in accordance with law and the purpose of such be approved by the authority.

Based on the assertions in the *Joint Petition*, the panel found that Navitas has the necessary technical, financial and managerial resources to own and operate Gasco. Navitas' parent company owns another gas company and is familiar with federal and state utility regulations, and Navitas intends to keep Gasco's current employees to continue to service the system. In addition, the record indicates that Navitas has the financial stability to successfully operate the Gasco system. This transaction furthers the public interest because it will allow continuity of service for the Gasco customers. Based on the record and these findings, the panel voted unanimously to approve the transfer of Gasco to Navitas pursuant to Tenn. Code Ann. § 65-4-113. As a part of its approval of

the transfer of Gasco to Navitas, the panel approved the Petitioners' request for the assignment or transfer of Gasco's franchise agreements.<sup>7</sup>

In addition, the panel voted unanimously to approve the financing transaction described in the *Amendment* pursuant to Tennessee Code Annotated § 65-4-109 based on the following findings:

(1) this financing transaction is subject to Authority approval pursuant to Tennessee Code Annotated § 65-4-109;

(2) the transaction is being made in accordance with the laws enforceable by this agency; and

(3) the transaction is in the public interest because it will facilitate the purchase of the Gasco properties.

The panel also voted unanimously to approve the existing Gasco base rates as requested by Navitas. Further, the panel found that the approval of the *Joint Petition* does not prejudice the regulatory accounting treatment resulting from Navitas' acquisition of Gasco as described in the *Joint Petition*.

**IT IS THEREFORE ORDERED THAT:**

1. The *Joint Petition* of Navitas TN NG, LLC and Gasco Distribution Systems, Inc. for approval of the transfer of control and authority from Gasco Distribution Systems, Inc. to Navitas TN NG, LLC, including its authority to provide utility services deriving from its Certificate of Public Convenience and Necessity in Jellico, Campbell County, Byrdstown, Pickett County and Fentress County, Tennessee and Whitley County, Kentucky, and related orders, approvals and actions of the Authority or its predecessor, as required by Tenn. Code Ann. § 65-4-113, through the acquisition of

---

<sup>7</sup> In support of the request in the *Joint Petition* for TRA approval of the assignment or transfer of franchise agreements from Gasco to Navitas, Navitas secured documentation from the respective political subdivisions expressing their approval or nonobjection to the assignments or transfers of these franchises. On December 8, 2010, the Authority received a joint letter from The Town of Byrdstown and Pickett County stating that those entities consent to the request of Navitas for the assignment of the franchise agreements. On December 9, 2010, the Mayor of City of Jellico filed a letter confirming Jellico's consent to the request for transfer of the franchise agreement from Gasco to Navitas.

ownership and control of the Gasco Utility Systems of Gasco Distribution Systems, Inc. by Navitas TN NG, LLC is approved.

2. The assignments of certain franchise agreements to Navitas TN NG, LLC, including the agreements between Gasco Distribution Systems, Inc. and the City of Byrdstown, Gasco and Pickett County and Gasco and the City of Jellico, to provide utility services in Jellico, Byrdstown, and Pickett County, Tennessee pursuant to Tenn. Code Ann. § 65-4-107 and the Byrdstown Natural Gas Franchise Ordinance of 2000, are approved pursuant to Tenn. Code Ann. § 65-4-113.

3. The financing arrangements as described in the *Amendment to the Joint Petition* and discussed herein are approved. Navitas TN NG, LLC is authorized to draw down \$610,500 on its existing USDA B&I Rural Development loan to pay for the Gasco Distribution Systems, Inc. properties located in Tennessee, and Navitas TN NG, LLC is further authorized to pledge those properties as security on that loan as required by the terms of that loan.

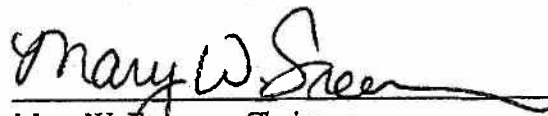
4. The authorization and approval given hereby shall not be used by any party, including but not limited to, any lending party for the purpose of inferring an analysis or assessment of the risks involved.

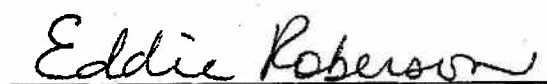
5. This decision is not intended to create any liability on the part of the Tennessee Regulatory Authority, the State of Tennessee or any political subdivision thereof.

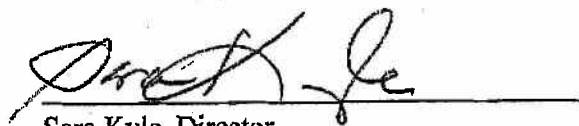
6. The existing Gasco Distribution Systems, Inc. base rates are approved as requested by Navitas TN NG, LLC.

7. The Tennessee Regulatory Authority's approval of the *Joint Petition* does not prejudice the regulatory accounting treatment resulting from Navitas TN NG, LLC's acquisition of Gasco Distribution Systems, Inc. as described in the *Joint Petition*.

8. Navitas TN NG, LLC shall file with the Tennessee Regulatory Authority a copy of any future orders of the Kentucky Public Service Commission that are entered regarding the Whitley County, Kentucky customers.

  
Mary W. Freeman, Chairman

  
Eddie Roberson, Director

  
Sara Kyle, Director

### ORDINANCE NO. 90-2011

AN ORDINANCE GRANTING A FRANCHISE TO Navitas TN NG, LLC, ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A GAS SYSTEM IN THE CITY OF JELICO, TENNESSEE. INCLUDING A SYSTEM OF GAS MAINS AND SERVICE PIPES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING GAS IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, ALLEYS, LANES, WAYS, UTILITY EASEMENTS, PARKWAYS AND OTHER PUBLIC GROUNDS OF THE CITY OF JELICO, TENNESSEE, AND AMENDING THAT PRIOR CERTAIN 1987 ORDINANCE NUMBER 4-87 FOR THE SAME PURPOSE.

BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF JELICO, TENNESSEE, as follows:

#### RECITALS

WHEREAS, the City is a political subdivision/municipality of the State of Tennessee, and is empowered by the State of Tennessee to grant franchises; and

WHEREAS, the "Company" is Navitas TN NG, LLC, the grantee of the rights under this franchise, a domestic limited liability company, authorized to do business within the State of Tennessee, with a mailing address of P.O. Box 183, Eakly, OK 73033 and a Principal Office of 18218 East McDermott, Suite 1, Irvine, CA 92614, and is currently active and in good standing and registered to do business in this State, and is authorized to enter into this Agreement; and

WHEREAS, the Company has requested the City to grant a franchise to enable the Company to install, maintain, and use facilities in, through, along or under City rights-of-way and other real property in order to provide natural gas services to residents and business owners throughout the City and adjoining service area if otherwise authorized by the County and State where applicable; and

WHEREAS, the Company and its employees are independent contractors and are not, under this Agreement, employees or agents of the City; and

WHEREAS, the City and the Company recognize that the prior Franchise holder which held under the provision of the said prior Ordinance No. 4-87 no longer holds a Franchise as a result of failure to perform and the filing of bankruptcy, finds that the present grant of such a franchise would be in the public interest by ensuring the availability and delivery of adequate, economical and efficient natural gas distribution services to the City 's citizens and businesses, and by utilizing efficiently the City's public rights-of-way; and



WHEREAS, subject to the terms and conditions set forth herein, the parties hereto are desirous of entering into a non-exclusive franchise agreement with renewal provisions, with the Company providing natural gas distribution services within the City and the primarily unincorporated areas of the County of Campbell within the service area; and

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, the parties agree as follows:

SECTION 1. This Ordinance shall be known and may be cited as the "JELICO NATURAL GAS FRANCHISE ORDINANCE."

SECTION 2. For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

1. "City" is the City of Jellico, Tennessee, a municipal corporation;
2. "Company" is Navitas TN NG, LLC, the grantee of the rights under this franchise, a domestic limited liability company, authorized to do business within the State of Tennessee, with a mailing address of as set forth above, said Company meaning the person/entity to whom this Franchise is granted by the THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF JELICO, TENNESSEE, and the lawful agent, successor, transferee or assignee of said person, subject to such conditions as may be prescribed by the City and other lawful authority.
3. "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
4. "Customer" shall mean a person or user of the Gas Distribution System who lawfully receives Gas Service within the service area with the Company's permission.
5. "Franchise" shall mean the authorization, or renewal thereof, by the THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF JELICO, TENNESSEE, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate or otherwise, authorizing the installation, construction, maintenance or operation of the Gas Distribution System for the purpose of offering Gas Services to Customers.
6. "Gas Distribution System" shall mean a connected set of distribution pipes and appurtenant equipment designed to deliver and distribute Gas Services to Customers within the City and adjoining unincorporated areas and certain designated incorporated areas where applicable within the service area.

7. "Gas Service" shall mean the furnishing, distribution and sale of natural gas whether consisting of natural and/or mixed for sale as a natural gas, for heating, domestic, industrial and other purposes and for transmitting gas into, through and beyond the jurisdictional boundaries of the City to a Customer.
8. "Property of Company" shall mean all property owned, installed or used by the Company in the conduct of its Gas Service business in the City and adjoining unincorporated areas and certain designated incorporated areas where applicable within the service area under the authority of this Franchise.
9. "Public Way" shall mean the surface of, and space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, drive, circle, or other public rights-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held in fee simple title or any other lesser or conditional estate, grant or leasehold interest by the City and where authorized by the appropriate authority any adjoining unincorporated areas and certain designated incorporated areas where applicable within the service area, which shall entitle the City and the Company to the use thereof for the purpose of installing, operating, repairing, and maintaining the Gas Service.
10. "Service Area" shall mean the present jurisdictional boundaries of the City and adjoining unincorporated areas and certain designated incorporated areas where applicable, wherein Gas Service is presently being provided or in which same may be provided, but shall include any additions thereto by intergovernmental agreement or other legal means.

SECTION 3. There is hereby granted by the City of Jellico, Tennessee to Navitas TN NG, LLC, its successors and assigns, the right, authority, privilege and franchise to erect, construct, operate and maintain a system of gas mains, service pipes, regulator stations and all other necessary and appropriate equipment and facilities for the transmission and distribution of gas in, upon, across, along and under the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds in the present or future corporate limits of the City of Jellico and in the environs of said City, and to import, transport, sell and distribute gas, whether natural, manufactured, or mixed, within the City and its environs, for the supplying and selling of said gas to said City, (as a customer) and the inhabitants, institutions, and businesses thereof; and for such purposes to construct, operate, maintain, renew, replace, repair, and extend all necessary gas mains, service pipes and other appliances, fixtures and facilities as may be necessary for said purposes, to-wit, the transmission, institutional uses, and such other purposes for which it is or may hereafter be used. The Franchise herein granted and accepted is only intended to convey a limited right and interest. It is not a warranty of title or interest in the City's rights-of-way or other public property. None of the rights granted herein shall affect the City's jurisdiction or authority over its property or

## Public Ways.

SECTION 4. This franchise and the rights herein granted shall take effect and be enforced from and after the effective date hereof, as required by law, and upon the filing of acceptance by the Company, and shall continue in force and effect for a term of twenty-five (25) years after the effective date. Provided, that if the acceptance is not filed within thirty (30) days after final passage of this Ordinance, the provisions of this franchise shall be null and void. The Company is granted herewith an option to extend the term of this franchise for three (3) successive periods of five (5) years each, each such five (5) year renewal term to commence at the end of either the original twenty-five (25) year term or at the end of the preceding five (5) year renewal term, all in such manner that the Company may extend this franchise for a total period of time of fifteen (15) years; the original term of twenty-five (25) years shall be automatically extended for one of the aforesaid additional five (5) year renewal terms unless the Company tenders Notice to the City at least one (1) year next preceding the end of the original twenty-five (25) year term of such contrary intention (such Notice shall be in writing tendered by Certified Mail, Return Receipt Requested); each of the remaining two (2) successive five (5) year renewal terms shall likewise take effect automatically unless the Company likewise tenders Notice to the City that it does not intend to renew the franchise as aforesaid. It is intended hereby that by use of the original twenty-five (25) year term and the three (3) five (5) year renewal terms the Company may extend the original franchise, in its discretion, to a period of time of either 30 years, 35 years, or 40 years, but in no event shall the term of this franchise extend beyond forty (40) years unless such extension is by subsequent act of the City. No purchase of the Company's interest in the system by third parties shall obligate the City in any way. Likewise, nothing herein shall prevent the City from issuing such franchise or franchises as it may deem necessary to such third parties as may purchase the system. At the expiration of this franchise whether same be following an unrenewed primary term, or following the last renewal term hereof, or if the Company abandons the system for any reason at any time, nothing herein shall prevent the City from exercising its rights of eminent domain' to take over ownership and operation of the system and all of its assets. Both parties hereto acknowledge that good faith is an express part of the agreement between the parties, and each party pledges to exercise good faith in all of its dealings one with the other.

SECTION 5. All gas mains, service pipes, fixtures, facilities and other appliances laid, constructed, maintained and operated by virtue of this franchise, shall be laid, constructed, maintained and operated in accordance with all applicable engineering practices and in full accord with any and all applicable engineering Codes adopted or approved by the natural gas distribution industry and/or engineering professions and in accordance with any applicable Statutes and Regulations of the State of Tennessee and of the Federal Government and any and all of their respective Agencies, Ordinances of the City of Jellico, and the Rules and Regulations of the Tennessee Regulatory Authority ("TRA") or of any other governmental regulatory commission, board or agency having jurisdiction over the Company and/or the City. Said facilities shall be so constructed so as not to interfere with the drainage of said City and any adjoining areas, or interfere with or injure any street, sewer or other public improvement which said City has heretofore made or may hereafter make in, upon, across, along or under any highway, street, avenue, road, alley, lane,

way, utility easement, parkway or other public grounds, or unnecessarily obstruct or impede such highway, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways or other public grounds of said City. The Company shall secure all necessary permits for any work within the Public Ways located within the Service Area and shall be subject to all applicable ordinances and fees.

SECTION 6. When the highways, street, avenues, roads, alleys, lanes, ways, utility easements, parkways or other public grounds are opened or any other opening is made by the Company within the City, whether the same be made for the purpose of laying, constructing, replacing or repairing the mains, pipes and other appliances and fixtures of said Company, said Company shall place and maintain all necessary safety devices, barriers, lights and warnings to properly notify all persons of any dangers resulting from such entrances, and shall comply with all safety regulations required by the federal, state or local laws.

SECTION 7. In the event that at any time during the period of this franchise the City shall lawfully elect to alter, or change the grade of any street, alley or other public ways in which the Company is required or is maintaining gas mains, pipes or other appliances and fixtures, the Company, upon reasonable written notice by the City, shall remove, or change or relocate its mains, pipes, or other appliances and fixtures as necessary to conform to the proposed alteration. However, the Company shall be reimbursed its relocation costs whenever such reimbursement is authorized by a Federal or State statute, for either urban renewal development or street relocation.

SECTION 8. When any highway, street, avenue, road, alley, lane, way, utility easement, parkway or other public ground is entered and/or altered by the Company, the Company shall, within a reasonable time, restore the same to its former condition as nearly as practicable in such a manner as to meet the approval of the City's Consulting Engineer, Codes Inspector, or other responsible agent of the City, provided, however, that such approval shall not be unreasonably withheld or delayed. In the event the Company shall fail to restore said streets, avenues, roads, alleys, lanes, ways, utility easements, parkways, or other public grounds to their former state, as nearly as practicable, the City may itself, after giving the Company reasonable written notice, make restoration and charge the costs thereof to the Company.

SECTION 9. The Company shall, at all times, defend, indemnify and hold harmless the City from and against any and all claims for injury to any person or property by the reason of the failure of the Company or its employees to exercise due care and diligence in and about the installing and maintenance of said system, guarding trenches and excavations while said system is being installed or subsequent extensions, repairs or alterations are being made or generally in the operation and maintenance of said system, provided the Company shall have been notified in writing of any claim against the City on account thereof, and shall have been afforded the opportunity fully to defend the same. Likewise, the Company covenants and agrees to indemnify, defend and hold the City harmless from and against any and all claims, demands, causes of action, suits, losses, liabilities, damages, costs and expenses, including attorney fees, sustained by the City and caused, directly or indirectly, by any act or omission on the part of the Company, its agents, employees, assigns or anyone subcontracting with the Company in the installation, construction, operation, or maintenance of the

Gas Distribution System. The City shall notify the Company, in writing, within ten (10) days after presentation of any claim or demand, either by suit or otherwise, made against the City caused by any of the aforesaid acts or omissions on the part of the Company. The Company shall thereupon have the duty to appear and defend and such demand, claim, suit or action on behalf of the City, without cost or expense to the City.

The City covenants and agrees to indemnify, defend and hold harmless the Company from and against any and all claims, demands, causes of action, suits, losses, liabilities, damages, costs and expenses, including attorney fees, sustained by the Company and caused, directly or indirectly, by any act or omission on the part of the City, its agents, employees, assigns or anyone subcontracting with the City in the installation, construction, operation, or maintenance of the Public Ways. The Company shall notify, in writing, the City within ten (10) days after presentation of any claim or demand, either by suit or otherwise, made against the Company caused by any of the aforesaid acts or omissions on the part of the City. The City shall thereupon have the duty to appear and defend any such demand, claim, suit or action on behalf of the Company, without cost or expense to the Company.

The indemnity, insurance and bond requirements contained herein shall survive the termination of this Agreement and shall continue for as long as the Property of the Company shall remain in the Service Area or until the parties execute a new Franchise Agreement which modifies or terminates these indemnity and insurance requirements.

The Company shall comply with all applicable rules and regulations of the Tennessee regulatory Authority relating to Customer requests about service options and procedures, fees, start-up or termination of service, conversion of accounts and billing and payment inquiries in a prompt and reasonable fashion. The Company shall be required to obtain, at its expense, any further rights and privileges from any abutting landowners as necessary.

SECTION 10. The City and the Company hereby agree that this Ordinance shall, from time to time, be subject to Rules and Regulations adopted by the Company and approved by the Tennessee Regulatory Authority or any other regulatory body having jurisdiction thereof during the term of this franchise, and shall also be subject to all Rules and Regulations adopted and approved by the Tennessee Regulatory Authority itself; and that all such Rules and Regulations shall be and become part of this Ordinance to the same extent and with the same effect as if said Rules and Regulations, were herein set forth in full. The Company shall not be obligated or required to make any extension of distribution mains, except in accordance with the provisions relating thereto adopted or approved by the Tennessee Regulatory Authority.

SECTION 11. Nothing contained herein shall be construed as preventing the Company from installing, placing, replacing, taking up, repairing or removing gas pipes, mains, service pipes or other devices for furnishing gas service, from using any easements for gas service which are shown on any plat or plats of any portion of the City heretofore or hereafter platted or recorded, or any easement which may hereafter be created, granted or dedicated for any such utility purposes by any person, firm or corporation whatsoever.

SECTION 12. No sale or transfer of the gas plant or system, or the transfer of any rights

under this franchise shall be effective until the vendee, assignee or lessee has filed in the Office of the City Recorder an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of this franchise, and agreeing to perform all the conditions thereof.

SECTION 13. The Company shall pay to the City an initial franchise fee (in good funds of the United States) in the amount of Five Thousand Dollars (\$5,000.00) payable within sixty (60) days of the Effective Date of this Ordinance. The Company shall further pay to the City during the term of this franchise an amount equal to Two and One-half Percent (2.5%) (in good funds of the United States) of the annual gross operating revenues during the preceding quarter from the sale of gas through the Company's distribution system within the City of Jellico as a further and additional franchise fee or tax. Said franchise tax shall become due and payable quarterly so long as the Company shall supply and sell natural gas to the public within said City, or so long as this franchise is in effect. The aforementioned franchise fee and gross receipts tax provided by this Ordinance shall be treated and recovered as required by Tennessee Code Annotated, Section 65-4-105 in conformity with any other applicable and lawful statute and regulation. The City shall have access at all reasonable times to the appropriate books of the Company for the purpose of ascertaining the amount due to the City under the Section. The Company shall furnish to the City a quarterly report showing the amount of its sales within the City.

SECTION 14. The Company agrees that the City, upon thirty (30) days prior written notice to the Company, may review such of its books and records as is necessary to ensure compliance with the terms of this Agreement. Notwithstanding anything to the contrary set forth herein, the Company shall not be required to disclose information that contains trade secrets or is proprietary or confidential in nature, nor disclose books and records of any affiliate not obligated under this Franchise. Upon request by the City, the Company shall furnish the City with a complete set of maps, including any plans, surveys, profiles or schematics if any of the Gas Distribution System added to the said system after the date of this agreement. Within forty-five (45) days of completing any new construction which adds to the present system after the date of this Franchise agreement, the Company shall provide detailed as-built design drawings showing the size, depth and location of all pipes, valves, gauges, and other service appurtenances and facilities added to the present system within the Service Area.

SECTION 15. The Company shall notify the City in writing within three (3) days of any applications, filings, requests, hearings, certificates, permits, inspections, corrective or disciplinary actions, or any other significant proceeding or administrative action under the review of or to be considered by the TRA pertaining to this Franchise or the Company's obligations and ability to perform under this Agreement. The Company at its sole expense shall provide copies of all applications, exhibits and other correspondence filed with or received from the TRA within ten (10) days next following receipt by the Company of any such applications, exhibits and other correspondence.

SECTION 16. The Company shall reimburse the City for all demonstrated costs, fees and expenses reasonably incurred by the City in connection with any lawfully required reviews or

approvals relating to this Agreement, any amendment thereto and in accordance with state law (Tennessee). Such expenses or estimates thereof may be reviewed by the Company prior to any commitment and shall not exceed a total amount in any given fiscal year (July 1 - June 30) of \$7,500.00 without the Company's consent. Likewise, the Company shall also be entitled to recover those same costs, fees, and expenses which it reimbursed the City pursuant to this Section 16 and any other costs, fees, and expenses it incurs hereunder in connection with any lawfully required reviews or approvals relating to this Agreement, any amendment thereto and in accordance with state law (Tennessee), but which are not reimbursable to the City, up to an amount not in excess of those same expenses incurred by the City and reimbursed to the City by the Company hereunder this Section 16, and the Company may recover those expenses reimbursed by the Company to the City hereunder and those like expenses reimbursable to the Company hereunder by means of an additional temporary franchise tax fee chargeable per customer bill up to \$2.00 per such customer bill until those said incurred expenses have been recovered, at which time that additional franchise tax fee shall terminate. The expenses thus recovered shall not be included in the sums upon which the regular 2.5% franchise fee payable to the City each quarter are calculated, the additional franchise tax fee being a temporary assessment to cover those additional costs incurred by the City and by the Company from time to time as a result of those reasons set forth above for which reimbursement is required.

SECTION 17. The City shall be provided reasonable access to the Property of the Company to ensure the health, welfare and safety of the public and to coordinate the co-location of public facilities within the Public Ways. Should the federal Office of Pipeline Safety or the TRA substantially diminish their oversight or reduce their staff during the term of this Agreement, then the parties agree to expeditiously negotiate new franchise provisions that will provide the City with increased access to information, and reports such as would be routinely submitted to the federal or state agencies.

SECTION 18. Nothing in this Agreement shall be deemed to impose any duty or obligation upon the City to determine the adequacy, safety or sufficiency of the Company's plans, designs, or facilities, or to ascertain whether the Company's proposed or actual construction, testing, maintenance, repairs, replacements or infrastructure installation or removal is adequate, sufficient or otherwise is in conformance with any plans or specifications whether or not such is reviewed or delivered to the City.

SECTION 19. the Company shall notify the City in writing within three (3) days of any applications, filings, requests, hearings, certificates, permits, inspections, corrective or disciplinary actions, or any other significant proceeding or administrative action under the review of or to be considered by the TRA pertaining to this Franchise or the Company's obligations and ability to perform under this Agreement. The Company at its sole expense shall provide copies of all applications, exhibits and other correspondence filed with or received from the TRA.

SECTION 20. INSURANCE AND INDEMNIFICATION:

Insurance Requirements. Company agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Agreement the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Company is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Company under this Agreement.

Commercial General Liability. Company agrees to maintain Commercial General Liability at a limit of liability not less than \$1,000,000 Each Occurrence and \$2,000,000 aggregate. Company further agrees coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability or Cross Liability.

Commercial Umbrella/Excess Liability. The Company agrees to maintain Commercial Umbrella/Excess Liability with concurrent policy dates to coverage afforded by the underlying Commercial General Liability. The Company agrees to endorse the BOARD OF MAYOR AND ALDERMEN OF THE CITY OF JELICO, TENNESSEE as an "Additional Insured" on the Commercial Umbrella/Excess Liability, unless the Commercial Umbrella/Excess Liability provides coverage on a pure/true follow-form basis, or the THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF JELICO, TENNESSEE is automatically defined as an Additional Protected Person. The Company agrees the Self-Insured-Retention shall not exceed \$25,000.

Business Automobile Liability. Company agrees to maintain Business Automobile Liability at a limit of liability not less than \$500,000 Each Occurrence. Company further agrees coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Company does not own automobiles, Company agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Worker's Compensation Insurance & Employers Liability. Company agrees to maintain Worker's Compensation Insurance in compliance with Tennessee law.

Additional Insured. Company agrees to endorse the City as an Additional Insured to the Commercial General Liability. The Additional Insured shall read "THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF JELICO, TENNESSEE."

Waiver of Subrogation. Company agrees by entering into this Agreement to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit Company to enter into an pre-loss agreement to waive subrogation without an endorsement, then Company agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Company enter into such an agreement on a pre-loss basis.



SECTION 21. If any section or portion of any section of this Ordinance shall hereafter be declared or determined by a court of competent jurisdiction to be invalid, the Company at its election (to be given to the City by notice in writing within thirty (30) days after any such declaration or determination) may ratify or confirm the remaining portions of this Ordinance and upon such ratifications or confirmation the remaining portions of this Ordinance shall remain in full force and effect.

SECTION 22. The Company shall, within thirty (30) days after the passage of this Ordinance, file in writing with the City Recorder of the City of Jellico its unconditional acceptance of the terms and conditions of this Ordinance signed by its President, and, after the filing of such acceptance, this ordinance shall constitute a contract between the parties hereto and shall (subject to the rights and powers vested in and Orders lawfully issued by the Tennessee Regulatory Authority or such other regulatory body of the State of Tennessee as may hereafter succeed to the rights and powers of the Tennessee Regulatory Authority) be the measure of the rights, powers, obligations, privileges and liabilities of the City and of the Company.

SECTION 23. All the privileges given and obligations created by this Ordinance shall be binding upon the successors and assigns of the Company, including those nonconflicting provisions which are now or may hereafter be attached herewith as addendums.

SECTION 24. This Ordinance is subject to the approval of the Tennessee Regulatory Authority. This franchise shall upon such approval take effect immediately, the public welfare so requiring it.

SECTION 25. In the event the City by agreement or by any other action should acquire regulatory authority and control over the Public Ways or other real property held in fee simple title or any other lesser or conditional estate, grant or leasehold interest by another local government (e.g., an incorporated city or town or unincorporated portion of the County of Campbell, or any like area in the State of Kentucky), the Company shall have the non-exclusive authority and privilege to engage in Gas Services in the acquired territory for the remainder of this Agreement unless stated otherwise in the municipality's local law or an applicable intergovernmental agreement.

#### SECTION 26. DEFAULT AND REMEDIES:

26.1 Termination for Cause. Either party may terminate this Agreement for cause if the other party fails or defaults on any material duties or responsibilities set forth in this Agreement and refuses or is unable to cure such default within a reasonable time .

26.2 Corrective Action. If either party finds that the other party has failed to perform or defaulted on any or all of the material duties or responsibilities set forth in this Agreement, the non-defaulting party shall provide the defaulting party a written "Notice of Default" in accordance with Section 27.13 of this Agreement. The Notice of Default shall describe with sufficient detail the defaulting party's failure to perform and/or default. The defaulting party shall

have a period of sixty (60) days from the receipt or delivery of the Notice of Default to correct the failure to perform or default. If the defaulting party fails to correct the failure to perform and/or default within sixty (60) days, the non-defaulting party may terminate this Agreement. If the City decides to terminate this Agreement, the City may revoke the Franchise in accordance with the procedures described in Section 26.4 of this Agreement.

26.3 Enforcement. Subject to applicable federal and State law, in the event either party is in default of any provision of the Franchise, the other party may: seek specific performance of any provision that reasonably lends itself to such remedy, as an alternative to money damages; commence an action at law for monetary damages or seek other equitable relief; and/or in the case of a substantial default of a material provision of this Agreement or the Franchise, the City may seek to terminate this Agreement and revoke the Franchise in accordance with Section 26.4 of this Agreement.

26.4 Revocation.

A. Should the City seek to revoke the Franchise after complying with the procedures set forth in Section 26.2 of this Agreement, the City shall give written notice to the Company of its intent to terminate this Agreement and to revoke the Franchise ("Notice of Intent to Revoke") based on a substantial default of a material provision of this Agreement or the Franchise. The Notice of Intent to Revoke shall contain the following:

A description of the specific nature of the default(s);

A statement of intent to revoke the Franchise;

A statement that a public hearing shall be held to consider the grounds for the termination of this Agreement and the revocation of the Franchise; and

The date, time and place of the hearing.

B. The public hearing described herein shall be scheduled between ninety (90) days and one hundred twenty (120) days from the date of the Company's receipt of the Notice of Intent to Revoke. The Company shall have ninety (90) days of receipt of such notice to object in writing and to state its reasons for such objection.

C. At the designated hearing, the City shall give the Company a full and fair opportunity to state its position on the matter, including without limitation the right to introduce evidence, to require the production of evidence, to question witnesses and to obtain a transcript of the proceeding, after which the City shall determine whether this Agreement shall be terminated and the Franchise revoked. The Company shall have a right to judicial review of the decision to the Circuit Court of Campbell County, Tennessee which jurisdiction and venue shall be deemed mandatory.

SECTION 27. MISCELLANEOUS PROVISIONS: Unless specifically set forth herein elsewhere to the contrary, the parties hereto agree as follows, to-wit:

27.1. Paragraph Headings. The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of the provisions of the Agreement.

27.2. Provisions Severable. Every provision of this Agreement is intended to be severable. If any term of provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

27.3. Rights and Remedies are Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude nor waive its rights to use any or all other remedies. Any rights provided to the parties under this Agreement are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

27.4. Successors and Assigns. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

27.5. Entire Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matters.

27.6. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Tennessee.

27.7. Preparation of Agreement. No presumption shall exist in favor of or against any party to this Agreement as a result of the drafting and preparation of this document.

27.8. No Waiver. No waiver of any breach by either party of the terms of this Agreement shall be deemed a waiver of any subsequent breach of the Agreement.

27.9. Counterparts. This Agreement shall be executed simultaneously in one or more counterparts, each of which shall be deemed as original, but all of which together shall constitute one and the same instrument.

27.10. Amendment. No amendment of this Agreement shall be effective unless the amendment is in writing, signed by each of the parties and duly passed and enacted and approved by all necessary regulatory authority. Neither party may unilaterally alter the material rights nor obligations set forth in this Agreement.

27.11. Savings Clause. If any of the provisions of this Agreement shall be held to be unenforceable or unconstitutional, the remaining provisions shall nevertheless be enforceable.

27.12. Notices. All notices and demands of any kind which either party hereto may be required or desires to serve upon the other party under the terms of this Agreement shall be in writing and shall be served upon such other party by personal service, or by leaving a copy of such notice or demand at the address hereinafter set forth, whereupon service shall be deemed complete, or by mailing a copy thereof by certified or registered mail, postage prepaid, with return receipt request, addressed as follows:

If to City:       City of Jellico  
                      Attn: Mayor  
                      410 S. Main Street  
                      Jellico, TN 37762

If to Company:    Navitas TN NG, LLC  
                      Attn: Thomas Hartline, CEO  
                      P.O. Box 183  
                      Eakly, OK 73033

In case of service by mail, it shall be deemed complete on the day of actual delivery as shown on the addressee's registry of certification receipt or at the expiration of the third day after the date of mailing, whichever first occurs. The addressee to which notices and demands shall be delivered or sent may be changed from time to time by notice served as hereinabove provided by either party upon the other party.

27.13. Assignment, Receivership and Foreclosure. Subject to the provisions of SECTION 12 herein above, the parties agree that this Agreement shall not be assigned, in whole or in part, to any other person or entity without the prior written consent of the City, which consent cannot be unreasonably withheld or delayed. The Company shall immediately notify the County if it files a petition in bankruptcy, files an answer admitting jurisdiction of a court filed pursuant to the Bankruptcy Code or is adjudicated bankrupt, makes an assignment for the benefit of creditors, or applies or consents to the appointment of any receiver or trustee of all or part of its property, pipelines or facilities within the Service Area. Upon foreclosure or judicial sale of any portion for the Company's business operations or facilities within the Service Area, the Company shall give the City prompt notice of such fact and the City may revoke the Franchise in accordance with the procedures described in Section 26.4 or other applicable provision hereof elsewhere in this Agreement. In the event the Company intends to sell the Gas Distribution System to a third party purchaser, the Company shall confirm in writing that the purchaser agrees to all of the terms and conditions of this Agreement in conformity with SECTION 12 above, and that the purchaser shall assume all liabilities and obligations of the Company under this Agreement and certifies that the purchaser is financially capable to fulfill said obligation and liabilities and is further capable of

operating said system in compliance with law; and, further consents to pay any additional review costs incurred by the City involved in the change in ownership that exceed the limits stated in SECTION 16 above.

27.14. Force Majeure. Neither party shall be liable for failure to perform hereunder, in whole or in part, due to contingencies beyond the party's reasonable control, including but not necessarily limited to acts of God, the public enemy, fire, floods, epidemics, earthquakes, quarantine restrictions, and strikes not created by the Company or the City, whether now existing or hereafter created.

27.15. Compliance with Laws. The Company shall comply with all applicable federal, State and local statutes, laws, rules, regulations and ordinances.

27.16. Publication Costs. Notwithstanding the limits stated in SECTION 16 above, the Company shall assume all costs of publication required by law for the grant of the Franchise.

27.17. Agreement Not to Compete, Power of Eminent Domain and Other Powers. Notwithstanding that this Franchise is non-exclusive, in consideration of the Company's undertaking hereunder, the City agrees not to engage in the business of distributing and selling natural gas during the term of this Franchise in competition with the Company. Nothing herein contained, however, shall be construed or deemed to prevent the City from exercising at any time any power of eminent domain, any police powers or any other power(s) granted to it under the laws of the State.

27.18. Changes, Alterations and Amendments. In the event of an amendment to the laws, rules or regulations of the State and/or the TRA applicable to this Agreement and the Franchise, the terms of this Agreement and the Franchise and the right and privileges thereby conferred and reserved, may be changed, altered, amended or modified upon mutual agreement between the City and the Company, which agreement shall not be unreasonably withheld or delayed.

27.19. Waiver of Trial by Jury. Company and the City each hereby agrees not to elect a trial by jury of any issue triable of right by jury, and waives any right to trial by jury fully to the extent that any such right shall now or hereafter exist with regard to this Franchise or any claim, counterclaim or other action arising in connection therewith. This waiver of right to trial by jury is given knowingly and voluntarily by Company and the City, and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. The City or Company, as applicable, is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by Company or the City, as applicable.

.....

Any other provision of any ordinance of the City of Jellico in conflict with this amendment shall henceforth be deemed to be likewise amended accordingly so as to give meaning, consistency, and effect to this amendment. This ordinance shall become effective upon final reading and passage, the

public welfare requiring it to be so done by this Ordinance.

APPROVED AND PASSED this 16 day of June, 2011.

APPROVED AND PASSED this 18 day of August, 2011.

ATTESTED:

[Signature]  
Linda Douglas, City Recorder

[Signature]  
Terry M. Basista, City Attorney

[Signature]  
Les Stiers, Mayor

Navitas TN NG, LLC

By: [Signature]  
Thomas Hartline, CEO and authorized agent in fact  
In acknowledgment and agreement with the  
above terms and conditions, binding the said  
Company hereby.

STATE OF California  
COUNTY OF Orange

Before me, the undersigned authority, a Notary Public of the state and county aforesaid, personally appeared **Thomas Hartline**, the CEO of Navitas TN NG, LLC, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the CEO and authorized agent in fact of Navitas TN NG, LLC, and that he as such CEO and authorized agent in fact and being authorized so to do, executed the foregoing instrument in behalf of the said Navitas TN NG, LLC, the bargainor herein, for the purposes therein contained, by signing the name of said Navitas TN NG, LLC as such CEO and authorized agent in fact thereof.

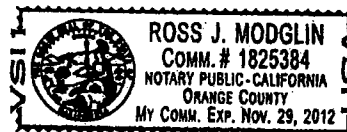
Witness my hand and official seal at office this 29<sup>th</sup> day  
of November, 2011.

[Signature]  
NOTARY PUBLIC

My Commission Expires: 11/29/2012

Place seal here:

revised: 10-20-2011



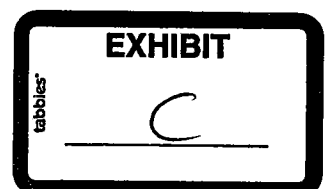
Before the  
Tennessee Regulatory Authority

Docket No. \_\_\_\_\_

**PETITION OF NAVITAS TN NG, LLC FOR APPROVAL OF NEGOTIATED  
FRANCHISE AGREEMENT WITH THE CITY OF JELICO, TENNESSEE  
PURSUANT TO TENNESSEE CODE ANNOTATED § 65-4-107**

Testimony  
of  
Thomas Hartline

On Behalf Of  
Navitas TN NG, LLC



**1Q: PLEASE STATE YOUR NAME.**

A. My name is Thomas Hartline.

**2Q: BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

A. I am employed by Navitas Utility Corporation as President and am Treasurer. I am also Secretary of Navitas TN NG, LLC ("Navitas"), Navitas Assets, LLC, and Fort Cobb Fuel Authority, LLC.

**3Q: WHERE IS THE PRINCIPLE BUSINESS OFFICE FOR NAVITAS TN NG LLC?**

A. Navitas' principal place of business is 18218 East McDermott, Irvine, California 92614, however we do maintain a local office at 613 Sunset Trail, Jellico, TN and 9825 Hwy 111, Static, TN.

**Q. PLEASE BRIEFLY EXPLAIN THE OPERATIONS OF NAVITAS.**

A. In Oklahoma, Navitas' sister company, Fort Cobb Fuel Authority furnishes natural gas service to approximately 4500 residential, agricultural and industrial customers located in 17 counties. In Tennessee, since January 1, 2011, Navitas has been engaged in furnishing natural gas service to approximately 551 customers located in: 1) Campbell County, Tennessee and Whitley County, Kentucky (the Jellico System); 2) Pickett County, Tennessee (the Byrdstown System) and; 3) Fentress County, Tennessee (the Fentress Domestic Taps). Navitas also furnishes natural gas service to approximately 145 customers located in Clinton County, Kentucky (the Albany System). Navitas' focus is serving customers in rural, high cost areas the larger gas utilities do not serve. We own approximately 34 miles of gas distribution and transmission pipe in rural Tennessee in addition to the facilities in Oklahoma and Kentucky. The assets of Navitas consist of the



gas distribution facilities, including mains, regulator stations, and metering equipment. Navitas purchases gas from a non-affiliated third party gas supplier, and distributes it to our customers.

**4Q: HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE TENNESSEE REGULATORY AUTHORITY AND HAVE YOUR CREDENTIALS BEEN ACCEPTED?**

A. Yes. I have testified twice before the Tennessee Regulatory Authority and numerous times before the Oklahoma Corporation Commission. My credentials have been accepted.

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

A. The purpose of my testimony is to present information to the Authority relating to the franchise agreement entered into between Navitas and the City of Jellico, Tennessee. An Ordinance (No. 90-2011) Granting a Franchise to Navitas was approved and executed by the Board of Aldermen and Mayor Les Stiers of the City of Jellico, Tennessee. This franchise revised previously enacted Ordinance No. 4-87 to enable Navitas to install, maintain and use facilities in, through, along or under City rights-of-way and other real property in order to provide natural gas services to residents and business owners throughout the City and adjoining service area.

**Q. COULD YOU PLEASE EXPLAIN THE CIRCUMSTANCES THAT CAUSED A NEED FOR A FRANCHISE AGREEMENT BETWEEN NAVITAS AND JELICO?**

A. Yes. Under T.C.A. § 65-26-101 *et seq.*, Navitas is required to have the consent of the Town of Jellico, in the form of a municipal ordinance, to operate and maintain a natural gas system in the City of Jellico, which includes enabling Navitas to install, maintain and use facilities in, through, along or under City rights-of-way and other real property in

order to provide natural gas service to residents and business owners throughout the City and adjoining service area. Additionally, Navitas and the City of Jellico desire to enter into a new franchise agreement following the approval and transfer of the prior franchise holder's agreement (Ordinance No. 4-87), which was due to expire, by Order of the Tennessee Regulatory Authority entered December 30, 2010.

**Q. WHEN DID NAVITAS BEGIN PURSUING A FRANCHISE ARRANGEMENT WITH JELICO?**

A. Navitas started discussions with Jellico regarding a possible franchise agreement in early 2010 when Navitas purchased the assets of the prior franchise agreement holder out of bankruptcy.

**Q. HOW WERE THOSE NEGOTIATIONS PURSUED?**

A. The negotiations with Jellico for a franchise ordinance were undertaken primarily by me in my capacity as President of Navitas Utility Corporation and Secretary of Navitas. Jellico was represented in these negotiations by Terry Basista, its city attorney.

**Q. WHAT WAS THE RESULT OF THOSE NEGOTIATIONS?**

A. These negotiations were successful as evidenced by an approved Ordinance No. 90-2011, attached hereto as **Exhibit A** and incorporated herein by reference.

**Q. WHAT ARE THE PRIMARY PROVISIONS OF THE NEW FRANCHISE ORDINANCE?**

A. The new franchise ordinance generally provides as follows:

- a. a twenty-five (25) year term arrangement which secures the provision of natural gas service to citizens, businesses and governmental institutions within Jellico;
- b. enables Navitas, an established provider of natural gas service, to install, maintain and use facilities in, through, along or under City rights-of-way and other real property

in order to provide natural gas services to residents and business owners throughout the City and adjoining service area;

c. Navitas shall pay the City an initial franchise fee of Five Thousand Dollars (\$5,000.00) payable within sixty (60) days of the Effective Date of the Ordinance and, additionally, a Two and One-half Percent (2.5%) regular franchise fee each quarter based on annual gross operating revenues during the preceding quarter from the sale of gas through Navitas' distribution system within the City of Jellico.

**Q. IS NAVITAS SATISFIED WITH THE NEGOTIATED RESOLUTION OF THESE ISSUES?**

A. Yes. Both parties were ultimately able to agree with the negotiated result and that result is reflected in Ordinance No. 90-2011 which was approved by the Mayor and Board of Alderman of Jellico on October 20, 2011 and subsequently accepted by Navitas.

**Q. WHAT IS THE STANDARD TO BE UTILIZED BY THE AUTHORITY IN DETERMINING WHETHER TO APPROVE ORDINANCE 90-2011?**

A. My understanding is that under the statute, the Authority is authorized to approve the Ordinance if it finds that it "is necessary and proper for the public convenience and properly conserves the public interest."

**Q. IN YOUR OPINION, ARE THE FRANCHISE TERMS SET FORTH IN ORDINANCE 90-2011 NECESSARY AND PROPER FOR THE PUBLIC CONVENIENCE AND IN THE PUBLIC INTEREST?**

A. Yes, on a number of grounds.

First, the franchise terms reflected in Ordinance 90-2011 will establish a twenty-five year arrangement through which the current and future residents, business enterprises and governmental facilities located within the City of Jellico and surrounding service area will be able to receive, under the supervisory jurisdiction of the Authority, the benefits of

natural gas service provided by Navitas. This arrangement will help ensure the continuing availability of high quality natural gas service to Navitas for the foreseeable future.

Second, the franchise facilitates the provision of such natural gas service to Jellico by an established and proven provider of that service well-known to this Authority and possessing the requisite expertise, facilities, systems and gas supply and transportation assets necessary to provide such service.

Third, the new franchise arrangement establishes adequate and proper mechanisms for access by Navitas to public rights of way, new and existing customers, and existing service lines, transmission and distribution facilities. These mechanisms help to ensure that Navitas is able to provide both adequate and efficient service and to comply with the requirements of this Authority to ensure the safety and protection of residents and property within Jellico and the surrounding area.

Fourth, the new franchise arrangement provides an incentive for Navitas to invest in infrastructure needed to provide improved and expanded service within Jellico by ensuring that Navitas will have the right to provide service within these areas for a sufficient period in order to permit Navitas the opportunity to recover the capital investment in such facilities under the rates approved by the Authority.

**Q. COULD YOU PLEASE SUMMARIZE YOUR THOUGHTS ON THE PUBLIC CONVENIENCE ISSUE?**

A. Yes. Approval of the franchise arrangement between Navitas and Jellico will ensure that the residents, businesses and governmental entities residing and operating within Jellico will receive high quality, safe, and economic natural gas service from a provider with a

long and successful history of providing that service to these areas. The franchise ordinance also provides substantial protections to the citizens of Jellico while concurrently offering Navitas a positive incentive to provide ongoing and expanded natural gas service to this area. That service will contribute to a stable infrastructure and expanded economic opportunity and will be beneficial to customers by bringing the desirable attributes of natural gas service to Jellico for some time into the future.

**Q. DO YOU KNOW OF ANY FACTS THAT WOULD INDICATE THAT THE NEW FRANCHISE ARRANGEMENT REFLECTED IN ORDINANCE NO. 90-2011 IS NOT IN THE PUBLIC INTEREST?**

A. No.

**Q. WHAT ARE YOU ASKING THE AUTHORITY TO DO IN THIS PROCEEDING?**

A. Based on the facts discussed above, we are asking the Authority to approve the new franchise agreement between Navitas and the City of Jellico as reflected in Ordinance No. 90-2011.

**Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

A. Yes.


VERIFICATION OF NAVITAS TN NG, LLC

STATE OF California )  
 )  
COUNTY OF Orange ) ss.

I Thomas Hartline, Secretary of Navitas TN 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 correct to the best of my knowledge, information and belief.

  
THOMAS HARTLINE

Subscribed and sworn to me, a Notary Public in and for the above County and State, on this 2<sup>nd</sup> day of February, 2012.

  
NOTARY PUBLIC

My Commission Expires:

