

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 26, 2012

IN RE:

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

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**DOCKET NO.
12-00011**

ORDER APPROVING FRANCHISE AGREEMENT

This matter came before the Tennessee Regulatory Authority (the "Authority" or "TRA") during the regularly scheduled Authority Conference on March 26, 2012, for a Hearing on the *Petition* for approval of negotiated franchise agreement with the City of Jellico, Tennessee, ("Jellico" or "City") filed by Navitas TN NG, LLC ("Navitas" or "Company") on February 6, 2012. With its *Petition*, the Company included the franchise agreement negotiated between Navitas and the City, Ordinance 90-2011,¹ which grants a franchise to Navitas to provide service to Jellico, and the Pre-Filed Direct Testimony of Thomas Hartline, President and Treasurer of Navitas Utility Corporation and Secretary of Navitas TN NG, LLC, Navitas Assets, LLC, and Fort Cobb Fuel Authority, LLC.² The Company seeks Authority approval of the negotiated franchise agreement as required by Tenn. Code Ann. § 65-4-107 (2004).³

¹ *Petition*. Exhibit B (February 6, 2012).

² *Petition*. Exhibit C (February 6, 2012).

³ Tenn. Code Ann. § 65-4-107 (2004) provides that no grant of a privilege or franchise from the State or a political subdivision of the State to a public utility shall be valid until approved by the Authority. Approval pursuant to Tenn. Code Ann. § 65-4-107 (2004) requires a determination by the Authority, after hearing, that "such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest."

PETITION

On December 30, 2010, the franchise agreement that had previously existed between Gasco and the City of Jellico, Ordinance No. 4-87, was assigned to Navitas in accordance with the Authority's Order in Docket No. 10-00220.⁴ The initial 25 year term of that franchise is scheduled to expire in 2012. Negotiations for a new franchise between the Company and the City began in early 2010.⁵ As a result of these negotiations, Ordinance 90-2011 was enacted and approved by the Mayor and Board of Aldermen of Jellico on October 20, 2011, and subsequently accepted by Navitas.⁶

The franchise agreement filed for consideration of the Authority in this docket initiates a twenty-five (25) year term from the date of approval by the Authority. Under the franchise agreement, the Company pays the City an initial franchise fee of \$5,000, payable within sixty days, and a two and one-half percent (2.5%) regular franchise fee each quarter based on the gross operating revenues during the preceding quarter from the sale of gas to all customers located within the limits of the City in exchange for the right to serve those customers.⁷ The payments are due on a quarterly basis, with the first payment made sixty (60) days after Authority approval.⁸

REQUIREMENT OF AND STANDARDS FOR AUTHORITY APPROVAL

Tenn. Code Ann. § 65-4-107 (2004) provides that no grant of a privilege or franchise from the State or a political subdivision of the State to a public utility shall be valid until approved by the Authority. Approval pursuant to Tenn. Code Ann. § 65-4-107 (2004) requires a determination by the Authority, after hearing, that "such privilege or franchise is necessary and

⁴ *Petition*, Exhibit A (February 6, 2012); see also *In re 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*, TRA Docket No. 10-00220, *Order Approving Transfer of Control and Approving Transfer of Franchise Agreements and Financing Transactions* (December 30, 2010).

⁵ *Pre-filed Direct Testimony of Thomas Hartline*, Exhibit C, p. 4 (February 6, 2012).

⁶ *Id.* at 4-5.

⁷ *Petition*, Exhibit B, p. 7 (February 6, 2012).

⁸ *Id.*

proper for the public convenience and properly conserves the public interest.” Tenn. Code Ann. § 65-4-107 (2004) further provides that in considering such privilege or franchise, the Authority “shall have the power, if it so approves, to impose conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require.”

PRE-FILED DIRECT TESTIMONY OF THOMAS HARTLINE

In his Pre-Filed Direct Testimony, Mr. Hartline states that the franchise agreement is necessary and proper for the public convenience and properly serves the public interest. Mr. Hartline provided four reasons that the new franchise is in the public interest, summarized as follows:

1. Ensures continued availability of high quality natural gas to the City for the foreseeable future;
2. Facilitates the provision of natural gas service by an established and proven provider that possesses the requisite expertise, facilities, systems and gas supply and transportation assets to provide such service;
3. Establishes adequate and proper mechanisms for access to public rights-of-way, new and existing customers, and existing service lines, transmission and distribution facilities in order to ensure that Navitas is able to provide adequate, efficient, and safe service; and,
4. Provides an incentive for Navitas to invest in infrastructure needed to improve and expand service within Jellico by ensuring that Navitas will have the right to provide service for a sufficient period of time to permit an opportunity for Navitas to recover such investment in its approved rates.⁹

⁹ Pre-filed Direct Testimony of Thomas Hartline, Exhibit C, p. 5-6 (February 6, 2012).

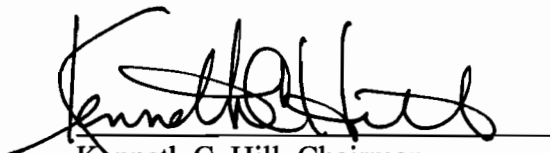
FINDINGS AND CONCLUSIONS

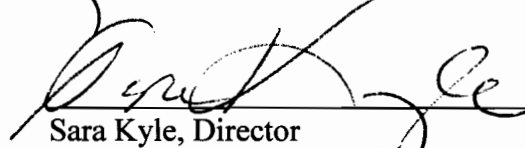
The Authority issued a *Notice of Hearing* on March 16, 2012. On March 21, 2012, Navitas filed a *Notice of Filing of Proof of Publication of Notice of Hearing* demonstrating that it had published notice of the Hearing in the LaFollette Press on March 15, 2012. On March 26, 2012, a Hearing was held before the voting panel at a regularly scheduled Authority Conference. Appearing for the Company were Klint Alexander, Esq. and Thomas Hartline, President and Treasurer of Navitas Utility Corporation and Secretary of Navitas TN NG, LLC, Navitas Assets, LLC, and Fort Cobb Fuel Authority, LLC. At the Hearing, Mr. Hartline ratified, then summarized, his Pre-Filed Direct Testimony, and was subject to questioning before the panel. Mr. Terry Basista, Esq., appeared by telephone on behalf of the City of Jellico, Tennessee. No person commented or sought intervention during the Hearing.

Thereafter, based upon the testimony and the administrative record as a whole, the panel found that the Franchise Agreement is necessary and proper for the public convenience and conserves the public interest. Based upon this finding, the panel voted unanimously to approve Navitas' *Petition* to enter into a Franchise Agreement with the City, to be effective immediately.

IT IS THEREFORE ORDERED THAT:

Navitas TN NG, LLC's *Petition* is approved and shall be effective immediately.


Kenneth C. Hill, Chairman


Sara Kyle, Director


Mary W. Freeman, Director