Before the

Tennessee Regulatory Authority

Docket No. 12-00068

FILED ELECTRONICALLY IN THE DOCKET ROOM ON 11/30/2012

PETITION OF NAVITAS TN NG, LLC FOR AN ADJUSTMENT TO ITS NATURAL GAS RATES AND APPROVAL OF REVISED TARIFFS

Rebuttal 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 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 3186D Airway Avenue, Costa Mesa, CA 92626, however we do maintain a local office at 613 Sunset Trail, Jellico, TN.

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

A. Yes. I have testified numerous times before the Tennessee Regulatory Authority. My credentials have been accepted.

5Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of this rebuttal testimony is to respond to and/or clarify several points raised in the direct testimony of Assistant Attorney General Charlena Aumiller of the Consumer Advocate and Protection Division (CAPD) submitted on November 21, 2012. This testimony incorporates by reference and supplements my previous testimony provided with the original submission of the Petition in this rate case proceeding.

6Q. WHAT DOCUMENTS HAVE YOU REVIEWED IN PREPARING YOUR REBUTTAL TESTIMONY?

I have reviewed the direct testimony of the Assistant Attorney General Charlena Aumiller of the Consumer Advocate and Protection Division and exhibits presented therewith, along with the documents produced in response to data requests by the CAPD in this proceeding. Further, I have review various financial statements and transaction details from Navitas' accounting system. I also participated in several meetings and teleconferences with CAPD officials.

7Q. PLEASE EXPLAIN THE MAIN POINTS OF YOUR REBUTTAL TESTIMONY.

A. In general, Navitas sought a $390,000 rate adjustment in its Petition, and the CAPD, after performing its analysis, is recommending a $250,000 rate adjustment in this action. This amounts to an approximate $140,000 revenue difference between CAPD and Navitas. This rebuttal testimony seeks to address several issues that were either disallowed or not addressed in the CAPD's calculation.

This rebuttal testimony is divided into two main sections: (1) Policies and Practices & (2) Figures and Charges, with each main section being further sub-divided into specific issue areas. In general, the CAPD is recommending a $250,000 rate adjustment in this action

(1) Policies and Practices

In this section, I wish to address to specific issues: (a) Customer Assistance and (b) Navitas' upcoming changes to its accounting methods.

(a) <u>Customer assistance</u> – Due to the length of time since the last rate case in the mid-1990s, the rates charged by Navitas' systems to its customers have fallen significantly behind the costs and expenses associated with providing natural gas service. Given the extraordinarily low rates today, even incremental adjustments of the rate upward over time, which are necessary to maintain a safe and effective gas system for current and future consumers, may present a rate shock for some of our rural customers.

To deal with this issue, Navitas pursues a number of avenues to help those in need manage their utility costs.

One of the most effective programs used by Navitas in other jurisdictions is the level pay plan allowing customers to smooth out the fluctuations in their gas bill. This is done within the billing system by having the customer pay the rolling twelve month average bill each month throughout the year, thereby avoiding large payment spikes in the winter. The system calculates the actual bill based on the tariff and then tracks the account balance based on the amount collected. Initial participation election is limited to the second and third quarters of the year. Navitas TN NG would like to implement such a program in tariff rates as part of the outcome in this proceeding.

For those customers who, for whatever reason, fall behind on their utility payments, Navitas, in its discretion, will usually work with those customers to arrange payment plans and other means to assist them in bringing their accounts current.

Navitas customer service personnel are familiar with state programs and state managed federal programs designed to provide needy customers with assistance, and informs customers of these programs. Navitas is also aware of and is able to provide information regarding tribal assistance programs as well as charity assistance.

Navitas also takes seriously its duty to follow any and all state protocols regarding temperature minimums for disconnection of service.

Moreover, Navitas uses its discretion to waive terms and conditions charges where appropriate for those customers demonstrating a good faith effort to become current.

(b) Accounting Method – On January 1, 2013, Navitas intends to adopt USoA expense accounting. The system operator, Navitas Utility Corporation, is in the process of matching accounts to conform to the USoA standards for gas and for telephone. Additionally, it is important to point out that the use of Quickbooks Enterprise Accounting software 2013 will allow the company to convert GAAP balance sheet presentation to USoA balance sheet presentation automatically. As Navitas continues to grow and evolve as a utility provider, it will been able to implement further improvements to various policies and practices.

(2) Figures and Charges

In this section, in an effort to close the gap between the amount of rate adjustment Navitas is seeking in its Petition and the proposed allowance reflected in the CAPD's testimony, I respond to certain direct questions presented by the CAPD, add some additional discussion not previously provided in testimony or exhibits, highlight certain issues that may have been obscured by the seeming complexity and rate case inexperience of Navitas, and explain how broad public policy issues may effect this case.

(a) Rate Base – The linkage between Excel file 'Navitas Rate Case Schedules', tab 'Rate Base' (schedule 2) and the file containing MFR exhibit 56a, including the support data for 56a, needs to be clarified. Exhibit 56a identifies the components of the \$2.443MM in plant and \$1.018MM in accumulated depreciation (both direct and indirect). Each of the components of exhibit 56a, acquisition adjustment, as well as one addition on schedule 2 is discussed below.

(b) Pipeline – This component was included by the CAPD.

(c) Other long-term assets – This component is comprised of (1) net \$163,405 of transaction closing costs in 2010 and (2) net \$32,380 of interim expenses incurred in test case year 2011 in connection with the emergency rate proceeding. According to the CAPD's testimony, these components of net plant were not allowed in their calculation.

(1) Under normal circumstances, the disallowance of transaction closing costs associated with the acquisition of a healthy urban utility would be a reasonable position for the State to take from the standpoint of benefit to the consumer; however, the Gasco/Navitas transaction was unique. This was not a conventional voluntary arms-length transaction between the buyer and seller, but instead a deal struck out of necessity pursuant to a bankruptcy liquidation proceeding in Ohio.

In 2010, the prior owner – Gasco Distribution Co. – was pursuing bankruptcy liquidation. In the absence of a buyer, the system was to be shut down. The sale of the system was necessary to avoid a shut-down, and thus was in the best interest of the public. Navitas acquired control of the system, and kept it operating. Moreover, the bankruptcy liquidation process was extremely expensive, substantially more expensive than the transaction costs associated with a normal arms-length transaction. In this rather unique case, it is clear that the expense associated with the transfer of control over the system was unavoidable, and the customer did benefit from the acquisition by avoiding a system shut-down in Tennessee.

(2) With regard to the 2011 rate case interim expenses prior to the filing of this action, the Authority entered three separate Orders pursuant to separate and distinct petitions. True and exact copies of these Orders are attached hereto as **Exhibit A**.

(i) *Order Approving Amended Settlement Agreement*

The Authority's Order dated December 1, 2011 in Case No. 11-00060 granted Navitas temporary emergency rate relief and acknowledged that before a full rate case can be filed, additional time was required to conduct a full and proper investigation into the cost and expenses associated with operating these systems. The December 1, 2011 Order effectively extended the starting point rate of this cause and, in fact, required its filing by the end of June 2012 and prescribed the conditions for terminating the temporary emergency rate relief upon that filing. Thus, the expenses associated with that proceeding should be allowed herein.

(ii) *Order Approving Franchise Agreement (April 26, 2012)*

The Authority entered its Order dated April 26, 2012 in Case No. 12-00011 approving a new 25 year franchise agreement with the City of Jellico because the 25 year franchise agreement between Gasco Distribution Co. and the City of Jellico was due to expire. The new twenty-five (25) year franchise agreement was a precondition of this rate case requiring the approval of the Authority pursuant to T.C.A. § 65-4-107 (2004). The legal charges of $7,405 associated with that proceeding should be allowed herein.

(iii) *Order Granting Request for Deferred Accounting (May 22, 2012)*

The Authority entered an Order dated May 22, 2012 in Case No. 12-00020 approving Navitas' contract with Tri-Star Energy to perform DIMP and other work. This contract was necessary to assist Navitas, a small company, in meeting federal DIMP regulatory guidelines. The expenses associated with that proceeding should be allowed herein.

Generally speaking, with regard to the cost of legal services and the time required to conduct full and proper rate case proceedings, Navitas neither sets the market for competitive legal services in Nashville nor controls the time required to conduct a rate case, but it is both entitled and required to obtain such services. The concern the Assistant AG Aumiller has is the baseline cost associated with conducting a rate case versus the size of the system. This issue is not unique to the State of Tennessee or to gas utility systems, and different states have pursued different measures to reduce the baseline regulatory costs for small systems. Navitas strives to manage the baseline cost associated with many aspects of operating small gas utility systems and seeks to create economies of scale wherever possible.

(d) Customer Service Center and Operations Center – These two items are listed in exhibit 56a. In the Petition, Navitas allocated 10.7% or $162,370, based on customer count, of the net plant of these facilities to the Tennessee operations. The CAPD made no provision for these facilities in their rate base analysis.

In subsequent discussions, the CAPD indicated that for out of state facilities, either allocating a portion of the facility attributable to Tennessee to the rate base or making an allowance for the recovery of the cost is allowed.

Thus, under the alternate method the net plant portion of these facilities attributable to Tennessee, $162,370, needs to be converted to a cost allocation and added to the expense figures. Assuming a thirty-year depreciable life yields $5412, and taking into the cost of debt (6.6%), and percentage of debt (71.8%) yields an additional $7,694, the result is a total cost allocation of $13,106.

Navitas is open to either method so long as the portion of these facilities used for the benefit of Tennessee customers is accounted for in the revenue requirement.

(e) Equipment and Tooling – This allocation was not addressed in the CAPD's analysis, but is important because a large portion of this $52,009 in allocated net plant is located in Tennessee in the form of the new service vehicle used in Jellico (purchased and registered in Tennessee) and the equipment used by the Tennessee servicepersons, it also includes but is not limited to meter shop tolling equipment and IT infrastructure allocable to Tennessee customers.

(f) Aircraft – To clarify the record, Navitas had allocated $166,818 of net plant to the Tennessee operations for this transportation equipment.

(g) Acquisition Adjustment – In the CAPD's analysis, $224,912 was removed for net plant by including a negative acquisition adjustment in the rate base. Navitas believes that this runs counter to the State's regulatory intent, represents inequitable treatment of the issue, and promotes bad public policy. According to a treatise on the subject:

> "Definition 18 in the uniform system identifies original cost as "the cost of such property to the person first devoting it to public service." The special meaning of this term requires further explanation. Property that was placed in service through construction is recorded at original construction cost, and it is that cost which is given consideration when a regulatory commission determines the rate base. At some future date the property may be sold in part or intact to another public utility. For example, utility A sells property which it constructed and placed in public service to utility B at a price greater than the original cost. Utility B will continue utilizing this property in service to the public. The latter must record in its … 'plant in service' account(s) that cost of construction incurred by utility A, regardless of the price paid for the property." Account 101 of utility B must indicate the "original cost." Any difference between purchase price

and original cost will be recorded in utility B's acquisition adjustment accounts."[1]

Accordingly, original cost less accumulated depreciation is net plant for the rate base. To deviate from this standard creates regulatory uncertainty.

Moreover, in the event that Navitas had paid an amount greater than net plant at the time of acquisition, it is unlikely that the CAPD would be in favor of allowing a positive acquisition adjustment to be included in the rate base. Therefore, it is not fair and equitable treatment of the issue to disallow this amount. On more than one occasion, Navitas has purchased regulatory assets with substantial net plant for $1. In one particular example, the Rimrock system in western Oklahoma, Navitas purchased approximately $189,000 of net plant for $1. Were the negative acquisition adjustment included in the rate base, then Navitas would not be allowed a return on the acquisition. The implications of the scenario created by the inclusion of the negative acquisition adjustment are that Navitas must pay more than the seller is willing to accept in order to earn a return on the net plant and, in so doing, Navitas will have less capital available to reinvest in the systems and implement improvements. This position does not benefit the company or the consumer (and in fact harms both), but does benefit the seller who in this case ran the system into the ground in the first place.

(h) The Distribution Integrity Management Program (DIMP) – During the transition period, the Authority approved Navitas' contract with Tri-Star Energy to perform DIMP and other work. The regulatory treatment prescribed in the Authority's Order dated May 22, 2012 called for the portion of the contract attributable to Tennessee

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[1] James E. Suelflow, Public Utility Accounting: Theory and Application (Institute of Public Utilities, Michigan State University: 1973).

to be capitalized and included in net plant. The amount of this capitalization of $27,300 is shown on the schedule 2 Rate Base.

(i) Taxes – The position to disallow recovery of taxes based on the entity structure of Navitas is contrary to public policy and does not benefit the consumer.

In order for Navitas to recover its federal tax obligation (and to be clear, it is the obligation of the Company) which is allowed to be passed through to the individual, the CAPD is forcing Navitas to reincorporate as a C-corporation. Navitas believes this position is counter to Tennessee public policy in that it was the State of Tennessee that created the LLC structure for the benefit of its corporate citizens.

Moreover, the CAPD is not benefiting the customer by requiring Navitas to convert to C-corporation status for tax recovery. In fact, this action harms the consumer in that it increases the take by the Federal government of the total available capital to the utility through its owners by first taxing the income of the utility at the statutory 35% rate and then taxing the distributions from the utility to its shareholders at an additional 15%. This double taxation sends more money to Washington D.C., leaving less money available to be reinvested in Tennessee.

(j) Deferred Revenue – In the Petition, Navitas suggested that due to rate shock, the rate increase be phased in over a period of several years. This phase in period, however, creates a situation where Navitas is unable to earn the revenue it is entitled to on the front end by regulation. This revenue is deferred. There should be a mechanism that allows this deferred revenue to be recovered at some point in the future.

Navitas recommends an accounting of this deferred revenue be kept and that it be allowed to increase rates in the year or years subsequent to the phase in period. In addition to making it easier to phase in rate increases, this approach would have the additional benefit of delaying future rate cases and thus reducing rate case expense to the consumer.

(k) Reconnection charge – In order to avoid customers gaming the system and disconnecting during the summer months to avoid the monthly charge, Navitas typically seeks to have a reconnection charge added to the tariff terms and conditions. The reconnection charge may state that if the same person (or ostensibly the same person) at the same location reconnects within a twelve month period then the monthly service charge that otherwise would have been charged will accrue and be added to the account. For simplicity Navitas requests that the amount of $54 be included in the overall rate adjustment for this purpose. This charge is used to defray the cost for the service person to travel to the location and lock off the meter (as required by law) and final out the customer and then six-months later again travel to the property and reactivate the customer. Moreover, those customers who game the system by undertaking such action reduce the anticipated revenue recovery to the company, which in turn increases rates in future and unfairly transfers costs to other consumers.

8Q. PLEASE EXPLAIN NAVITAS' PROPOSED RATE DESIGN FOR THE PHASE-IN PERIOD

A. Below is a chart containing the suggested rate design implemented in three phases over a two-year period. There are three rate classes and four components to the rates (not including terms and conditions charges, i.e. – late fees, etc.) in each class, monthly meter charge, tier 1 flow charge, tier 2 flow charge, and the cost of gas. The cost of gas calculation is prescribed by regulatory rules and is not shown below.

	January 1, 2013	January 1, 2014	December 31, 2014
Residential			
Monthly meter charge	6.00	7.00	9.00
Tier 1: 1 – 9 CCF	1.555/CCF	1.555/CCF	1.665/CCF
Tier 2: > 9 CCF	0.595/CCF	0.795/CCF	0.995/CCF
Commercial			
Monthly meter charge	6.00	7.00	9.00
Tier 1: 1 – 9 CCF	1.555/CCF	1.555/CCF	1.665/CCF
Tier 2: > 9 CCF	0.595/CCF	0.795/CCF	0.995/CCF
Industrial			
Monthly meter charge	6.00	9.00	14.00
Tier 1: 1 – 9 CCF	1.555/CCF	2.330/CCF	2.885/CCF
Tier 2: > 9 CCF	0.495/CCF	0.745/CCF	0.995/CCF

Comparison to alternatives – Below Navitas compares the proposed final cost of natural gas utility service to the readily available alternatives of propane and electricity. Navitas used the following assumptions: for propane 91,000 Btus per gallon at 2.39/gallon & $5.42 monthly tank rental, for electricity 29.6 times the price per kwh of $0.14 and 15% reduction in efficiency, current price of gas of $0.50 / CCF, the average residential customer usage in CCF as follows:

	J	F	M	A	M	J	J	A	S	O	N	D	T
CCF	95	71	44	16	10	4	4	5	6	18	41	63	377
M	9.00	9.00	9.00	9.00	9.00	9.00	9.00	9.00	9.00	9.00	9.00	9.00	108.00
T1	14.99	14.99	14.99	14.99	14.99	6.66	6.66	8.33	9.99	14.99	14.99	14.99	151.52
T2	85.57	61.69	34.83	6.97	1.00	0	0	0	0	8.96	31.84	53.73	284.57
G	47.50	35.50	22.00	8.00	5.00	2.00	2.00	2.50	3.00	9.00	20.50	31.50	188.50
T	157.06	121.18	80.81	38.95	29.98	17.66	17.66	19.83	21.99	41.94	76.33	109.22	732.59

Projected charges for natural gas in 2015: $733

Projected charges for propane: (377 CCF * 1.1 gal/CCF x $2.39/gal) + ($5.42*12) = $1,056

Projected charges for electricity: 377 CCF * 29.6 kwh/CCF * (95%/80%) * $0.14/kwh = $1,855

9Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

VERIFICATION OF NAVITAS TN NG, LLC

STATE OF Tennessee)

) **ss.**

COUNTY OF Davidson)

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 supplemental 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 29th day of November, 2012.

Shirley J. Garner

NOTARY PUBLIC

My Commission Expires: 5/3/2016

SHIRLEY J. GARNER STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.

My Commission Expires MAY 3, 2016

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

December 1, 2011

IN RE:	)	
	)	
PETITION OF NAVITAS TN NG, LLC	)	**Docket No. 11-00060**
FOR EMERGENCY RELIEF FOR	)	
NATURAL GAS RATES	)	

ORDER APPROVING AMENDED SETTLEMENT AGREEMENT

This matter came before Director Kenneth C. Hill, Director Sara Kyle and Director Mary W. Freeman of the Tennessee Regulatory Authority ("Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on August 1, 2011, to hear and consider the *Petition for Emergency Relief* filed by Navitas TN NG, LLC ("Navitas") on April 20, 2011, and the *Amended Proposed Settlement Agreement* filed by Navitas and the Consumer Advocate and Protection Division of the Office of the Tennessee Attorney General ("Consumer Advocate") (collectively the "Parties") on July 14, 2011.

BACKGROUND

Navitas is a Tennessee limited liability company under the laws of the State of Tennessee and is engaged in the transportation, distribution, and sale of natural gas service to approximately 551 customers residing in Campbell County, Tennessee and Whitley County, Kentucky (the Jellico System),[1] Pickett County, Tennessee (the Byrdstown System) and Fentress County,

[1] By Order of the Public Service Commission of the Commonwealth of Kentucky dated August 13, 1990, 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.

EXHIBIT
A

Tennessee (the Fentress System).[2] Navitas also furnishes natural gas service to approximately 145 customers located in Clinton County, Kentucky (the Albany System).[3]

On December 30, 2010, the Authority issued an Order approving the transfer of control and authority from Gasco Distribution Systems, Inc. ("Gasco")[4] to Navitas, including its authority to provide retail gas utility services under its Certificate of Public Convenience and Necessity in Jellico, Campbell County, Byrdstown, Pickett County and Fentress County, Tennessee and Whitley County, Kentucky.[5] In addition, assignments of certain franchise agreements between Gasco and the City of Byrdstown, Pickett County, and the City of Jellico, to provide utility services therein, and financing arrangements were approved by the Authority. Thereafter, Navitas adopted the existing tariffs of Gasco for its natural gas operations.[6]

<u>TRAVEL OF THE CASE</u>

On April 20, 2011, Navitas filed its *Petition for Emergency Relief* asserting that its existing rates and charges do not provide sufficient revenue to cover its costs to operate the Byrdstown, Jellico and Fentress systems and requesting new rates to reduce its operating losses.[7] In its Petition, Navitas also asserts that its existing tariffs do not include a customer service charge, and that without a customer service charge to compensate for low usage during the warmer months, when natural gas usage is non-existent or very low, Navitas will be operating at

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[2] *Petition for Emergency Relief*, p. 1 (April 20, 2011).
[3] *Id.*
[4] Gasco filed for Chapter 11 bankruptcy protection (Case No. 09056171) in the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division on June 1, 2009 and operated as Debtor in Possession until the acquisition by Navitas was approved by the Authority. *See In Re: Joint Petition of Navitas TN NG, LLC And Gasco Distribution Systems, Inc. for Approval of Transfer of Control and Authority of Gasco Distribution Systems, Inc.*, Docket No. 10-00220, *Order Approving Transfer of Control and Approving Transfer of Franchise Agreements and Financing Transactions* (December 30, 2010).
[5] *Id.*
[6] *Id.*
[7] *Petition for Emergency Relief*, p. 3 (April 20, 2011).

a revenue deficiency.[8] Navitas states that it plans to file a full rate case once it has operated and obtained actual information for a twelve-month period.[9]

On May 5, 2011, pursuant to Tenn. Code Ann. § 65-4-118, the Consumer Advocate filed its *Petition to Intervene* with the Authority. During a regularly scheduled conference held on May 9, 2011, the Authority convened a contested case proceeding, appointed a Hearing Officer for the purpose of preparing the matter for a hearing before the panel, and suspended Navitas' proposed tariff from May 20, 2011 to August 18, 2011. On May 26, 2011, the Hearing Officer issued a Notice of Status Conference scheduling an initial status conference on June 6, 2011. On June 8, 2011, the Hearing Officer issued an *Order Granting the Consumer Advocate's Petition to Intervene and Reflecting Action Taken at the June 6, 2011 Status Conference*, which included directing the parties to submit an agreed protective order and procedural schedule by June 10, 2011. Navitas submitted the pre-filed testimony of Mr. Thomas Hartline on June 17, 2011 and the Hearing Officer issued a procedural schedule on July 1, 2011.

On July 5, 2011, the Parties filed a Proposed Settlement Agreement. At a status conference on July 11, 2011 the Hearing Officer requested certain clarifications and modifications to that agreement. In response to that request, Navitas and the Consumer Advocate filed the *Amended Proposed Settlement Agreement* on July 14, 2011.

On July 15, 2011, the Authority issued a Notice of Hearing setting the Hearing on the Merits for August 1, 2011. On July 26, 2011, Navitas filed a copy of the required public notice

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[8] Specifically, Navitas proposes a fixed monthly charge of $6.00 and a $1.00 charge per CCF, for the first 9 CCF of usage per month, and a $0.40 per CCF commodity charge. *Petition for Emergency Relief*, Exhibit C (April 20, 2011).

[9] *Petition for Emergency Relief*, p. 3 (April 20, 2011).

that had been published in the Lafollette Press and the Pickett County Press on July 21, 2011. In addition, as evidenced by the Affidavit of Mailing included in the July 26, 2011 filing, Navitas mailed a direct notice to customers residing in Kentucky on July 22, 2011.

THE HEARING

The Hearing in this matter was held before the voting panel assigned to this docket on August 1, 2011. Participating in the Hearing were the following parties and their respective attorneys:

Navitas – Klint W. Alexander, Esq., Wyatt, Tarrant & Combs, LLP, 2523 West End Avenue, Ste 1500, Nashville TN 37203, and **Mary Kathryn Kunc, Esq.,** Ron Comingdeer & Associates, 6011 N. Robinson, Oklahoma City, OK 73118.

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

Mr. Thomas Hartline, President and Treasurer of Navitas Utility Corporation and Secretary of Navitas, Navitas Assets, LLC, and Fort Cobb Fuel Authority, LLC, presented testimony, including a discussion of the terms of the *Amended Proposed Settlement Agreement*, and was available for questioning by the panel. The *Amended Proposed Settlement Agreement* fully sets forth the terms and conditions agreed to by the Parties; briefly, those terms and conditions are described as follows:

a. Effective upon TRA approval, a customer charge of $6.00 per month will be implemented as referenced in the proposed tariff page (Exhibit A to the Agreement);

b. Effective upon TRA approval, the volumetric charge will be increased by $0.25 for the first 9 Ccf per month as referenced in the proposed tariff page (Exhibit A to the Agreement). This is $0.75 less than sought by Navitas in its Petition;

c. The proposed temporary rate changes will produce approximately $50,052 in additional revenue, based on the schedule attached at Exhibit B, as opposed to the $96,000 sought. This is $46,000 less than sought by Navitas in its Petition;

d. Navitas will file a formal rate case including all minimum filing requirements and supporting sworn testimony by no later than June 30, 2012. If Navitas does not file a formal rate case by this date, the increases set forth above will not be billed to Tennessee ratepayers as of the July, 2012 billing period. Furthermore, the alterations to the rates of Navitas subject to this Agreement will expire at the conclusion of the rate case filed under this subsection of the Agreement when the Authority puts new rates into effect.

e. Navitas agrees to meet all applicable reporting requirements of the TRA, including but not limited to 3.04 reports and all quarterly and annual reports and to provide copies to the Consumer Advocate at the same time as filing with the TRA.

f. Navitas will provide notice of the consideration of this Proposed Settlement Agreement in newspapers of general circulation within its service area. The Notice is attached to the Agreement as Exhibit C.[10]

The Consumer Advocate did not present witnesses at the Hearing, but did express support for the *Amended Proposed Settlement Agreement*. The panel provided an opportunity for public comment, but no one sought recognition at the Hearing.

Thereafter, the panel deliberated the merits of the *Amended Proposed Settlement Agreement* and found that, based on the information contained in the record and the testimony presented, the terms and conditions set forth in the *Amended Proposed Settlement Agreement* were just and reasonable and in the public interest. Therefore, the panel unanimously voted to approve the *Amended Proposed Settlement Agreement.*

IT IS THEREFORE ORDERED THAT:

1. The *Amended Proposed Settlement Agreement* between Navitas TN NG, LLC and the Consumer Advocate and Protection Division, a copy of which is attached to this Order as Exhibit 1, is approved and adopted, and incorporated in this Order as if fully rewritten herein.

[10] *Amended Proposed Settlement Agreement*, pp. 3-4 (July 14, 2011).

2. Navitas shall file a tariff consistent with the terms and conditions of the *Amended Proposed Settlement Agreement,* as reflected in Exhibit 1 attached hereto, and approved and adopted herein.

Kenneth C. Hill, Director

Sara Kyle, Director

Mary W. Freeman, Director

RECEIVED

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T.R.A. DOCKET ROOM

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:	)	
	)	
PETITION OF NAVITAS TN NG, LLC	)	**Docket No. 11-00060**
FOR EMERGENCY RELIEF FOR	)	
NATURAL GAS RATES	)	
	)	

AMENDED PROPOSED SETTLEMENT AGREEMENT

Following a status conference on July 11, 2011 in which the Hearing Officer requested certain clarifications and modifications to a proposed settlement agreement filed in this docket on July 5, 2011, for the sole purpose of settling this case, Tennessee Regulatory Authority ("TRA" or "Authority") Docket Number 11-00060, Petitioner Navitas TN NG, LLC ("Navitas" or "Company") and Robert E. Cooper, Jr., the Tennessee Attorney General and Reporter, through the Consumer Advocate and Protection Division ("Consumer Advocate"), (collectively the "Parties") respectfully submit this Amended Proposed Settlement Agreement ("Proposed Settlement Agreement" or "Agreement"). Subject to TRA approval, the Parties stipulate and agree as follows:

1. Navitas is a Tennessee limited liability company under the laws of the State of Tennessee and is engaged in the business of transportation, distribution, and sale of natural gas in Campbell County, Pickett County, and Fentress County, Tennessee, and in Whitely County and Clinton County in Kentucky. Navitas is a public utility pursuant to the laws of Tennessee, and its public utility operations are subject to the jurisdiction of the TRA.

2. Navitas is a wholly-owned subsidiary of Navitas Assets, LLC, a Delaware limited liability company. The principal office and place of business of Navitas is located at 18218 East

McDurmott, Irvine, California 92614. Local offices are maintained at 613 Sunset Trail, Jellico, Tennessee 37762 and 9825 Hwy 111, Static, Tennessee.

3. On December 30, 2010, the Authority issued an Order in TRA Docket 10-00220 approving the transfer of control of the utility systems of Gasco Distribution Systems, Inc. ("Gasco"). At the time of the acquisition by Navitas of Gasco, Gasco operated as Debtor in Possession while in proceedings before the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division. Navitas adopted all of Gasco's existing tariffs.

4. On April 20, 2011, Navitas filed a Petition for Emergency Relief in which the Company sought approval to increase the rates paid by Tennessee consumers. Since acquiring the system formerly held by Gasco, Navitas has been operating at a substantial loss. The Petition sought to implement a monthly customer charge of $6.00 and a charge of $1.00 per 9 Ccf per month. The relief sought is estimated to reduce the operating losses of Navitas from $159,000 to $62,000. By this filing, Navitas has not sought to cure the entire revenue deficiency it submits it is incurring or sought to make any return on its investment.

5. On May 5, 2011, the Consumer Advocate filed a petition to intervene to investigate the need for emergency relief sought by Navitas and the impact of such relief on Tennessee consumers.

6. In response to TRA data requests and in sworn pre-filed testimony, Navitas has stated there are insufficient records and accurate data from which to formulate a test year to file a formal rate case. Navitas submits very few records were provided to Navitas during the acquisition of Gasco.

7. According to Navitas' sworn testimony, currently, Navitas is operating at a significant financial loss. According to TRA quarterly "3.04" surveillance reports on file with the

Authority, Gasco had not earned a profit since 2005. Gasco had not filed for a rate increase since 1992. Unlike all other natural gas public utilities in Tennessee, the rate design of neither Gasco in the past nor of Navitas in the present has included a monthly customer charge.

8. Both Navitas and the Consumer Advocate recognize the extraordinary circumstances in this matter. The Parties have engaged in a substantial review and informal discovery in this matter, have reviewed the TRA data requests and date responses, and have undertaken settlement discussions to resolve the disputed issues in this Docket. Based on those discussions and Navitas' sworn representations regarding the lack of information and data available to file a rate case, the Parties have agreed to settle the issues pending solely in this Docket. More specifically, subject to TRA approval, the Parties have agreed to the following terms and conditions of compromise and settlement based on the unique and extraordinary facts of this case:

a. Effective upon TRA approval, a customer charge of $6.00 per month will be implemented as referenced in the proposed attached tariff page (Exhibit A);

b. Effective upon TRA approval, the volumetric charge will be increased by $0.25 for the first 9 Ccf per month as referenced in the proposed tariff page (Exhibit A). This is $0.75 less than sought by Navitas in its Petition;

c. The proposed temporary rate changes will produce approximately $50,052 in additional revenue, based on the schedule attached at Exhibit B, as opposed to the $96,000 sought. This is $46,000 less than sought by Navitas in its Petition;

d. Navitas will file a formal rate case including all minimum filing requirements and supporting sworn testimony by no later than June 30, 2012. If Navitas does not file a formal rate case by this date, the increases set forth above will not be billed to Tennessee ratepayers as of the July, 2012 billing period. Furthermore, the alterations to the rates of Navitias subject to this Agreement will expire at the conclusion of the rate case filed under this subsection of the Agreement when the Authority puts new rates into effect.

e. Navitas agrees to meet all applicable reporting requirements of the TRA, including but not limited to 3.04 reports and all quarterly and annual reports and to provide copies to the Consumer Advocate at the same time as filing with the TRA.

f. Navitas will provide notice of the consideration of this Proposed Settlement Agreement in newspapers of general circulation within its service area. A copy of the notice Navitas intends to utilize is attached as Exhibit C.

9. The stipulations agreed to in this Proposed Settlement Agreement, which are the product of negotiations and substantial communication and compromise between the Parties, are just and reasonable and in the public interest.

10. The Parties jointly recommend that the Authority issue an order adopting this Proposed Settlement Agreement in its entirety without modification.

11. If the TRA does not accept the Proposed Settlement Agreement in whole and as full and final settlement of the issues in this Docket, this Proposed Settlement Agreement shall terminate and the Parties shall not be bound by any position set forth in this Proposed Settlement Agreement. Should this Proposed Settlement Agreement terminate, it will be considered void and have no binding effect, and the signatories to this Proposed Settlement Agreement reserve their rights to fully participate in all relevant proceedings notwithstanding their agreement to the terms of this Proposed Settlement Agreement. The provisions of this Proposed Settlement Agreement are not severable.

12. By agreeing to this Proposed Settlement Agreement, no Party waives any right to continue litigating this matter should the Proposed Settlement Agreement be rejected by the TRA in whole or in part.

13. No provision of this Proposed Settlement Agreement shall be deemed an admission of any Party.

14. The Parties agree to support this Proposed Settlement Agreement in any proceeding before the Authority in this Docket; however, the Parties further agree and request the Authority to order that the settlement of any issue pursuant to this Proposed Settlement Agreement shall not be cited by the Parties or any other entity as binding precedent in any other proceeding before the Authority or any court, state or federal.

15. The provisions of this Proposed Settlement Agreement do not necessarily reflect the positions asserted by any Party, and no Party to this Proposed Settlement Agreement waives the right to assert any position in any future proceeding except as expressly stipulated herein. This Proposed Settlement Agreement shall not have precedential effect in any future proceeding or be binding on any Party except to the limited extent necessary to implement the provisions hereof.

16. The Parties agree to implement this Proposed Settlement Agreement in good faith and with due diligence.

17. This Proposed Settlement Agreement shall be governed by and construed under the laws of the State of Tennessee, notwithstanding conflict of law provisions.

SIGNATURES ON FOLLOWING PAGE

The foregoing Proposed Settlement Agreement of Docket 11-00060 is agreed and stipulated to this 14 day of July, 2011.

FOR NAVITAS TN NG, LLC:

John Knox Walkup, Esq.
Klint W. Alexander, Esq.
Wyatt, Tarrant & Combs, LLP
2525 West End Avenue South, Suite 1500
Nashville, TN 37203-1423
(615) 244-0020

FOR THE ATTORNEY GENERAL AND REPORTER CONSUMER ADVOCATE AND PROTECTION DIVISION:

R E Cooper Jr

Robert E. Cooper, Jr. (BPR No. 10934)
Attorney General and Reporter

Ryan L. McGehee by Vance Broemel

Ryan L. McGehee (BPR No. 25559)
Assistant Attorney General
Consumer Advocate and Protection Division
Office of Attorney General
425 5th Avenue North
Nashville, TN 37243-0491
(615) 532-5512

EXHIBIT A

Residential and Commercial Tariff
First Revised TRA Service Schedule No. 1

Navitas TN NG, LLC, Jellico Division
P.O. Box 183
121 Eakly Campus Road
Eakly, Oklahoma 73033

SCHEDULE OF APPROVED RATES
As ordered by the
TENNESSEE REGULATORY AUTHORITY

For billing all Residential Natural Gas Service
In the entire service area of the Company

Effective upon approval by and further order of the Commission, the following schedule shall be charged by Navitas TN NG, LLC, Jellico Division for natural gas served in the territory shown above for the class of service indicated in accordance with the Company's Rules and Regulations, where the Company's distribution mains are suitable for supplying the desired service.

RESIDENTIAL & COMMERCIAL "RC" SERVICE
Schedule No. 1

AVAILABILITY

Available to any residential or commercial customer within all areas served by Navitas TN NG, LLC, Jellico Division.

BASE RATE (1)

Customer charge per month	$6.00
First 9 Ccf per month(2)	$0.25 per Ccf
Commodity charge	$.0.40 per Ccf

(1) The cost of purchased gas is not included in the base rate/non-commodity charge.
(2) The charge for the first 9 Ccf per month is in addition to the per Ccf charge per customer class for the first 9 Ccf. For example, if a customer uses 10 Ccf in a month, the charge will be $6.00 (customer charge) plus $0.25 per Ccf for the first 9 Ccf plus $0.40 per Ccf for the first 9 Ccf then $0.40 for the 10th Ccf used that month, for a total non-commodity charge of $12.25

CUSTOMER MONTHLY CHARGE

A monthly charge for gas delivered from the time of initial service until termination at the customer's request will be billed, unless there is a temporary discontinuance of service in which case there will be a reconnect charge.

PAYMENT TERMS

All bills for service are due upon presentation and the above stated net rate shall be allowed if payment is made on or before the last day for payment as specified on the bill. Payments made after that day shall be for the gross amount plus five percent (5%) of the net bill.

ADJUSTMENTS

Bills for service are subject to adjustment for changes in the cost of purchased gas. Purchased gas adjustments and all applicable taxes and fees are in addition to the above rate.

Issued by: Thomas Hartline
Secretary

Effective:

Docket No:

EXHIBIT

tabbies

A

Navitas TN NG, LLC, Jellico Division
P.O. Box 183
121 Eakly Campus Road
Eakly, Oklahoma 73033

SCHEDULE OF APPROVED RATES
As ordered by the
TENNESSEE REGULATORY AUTHORITY

For billing all Public, Industrial and Institutional Natural Gas Service
In the entire service area of the Company

Effective upon approval by and further order of the Commission, the following schedule shall be charged by Navitas TN NG, LLC, Jellico Division for natural gas served in the territory shown above for the class of service indicated in accordance with the Company's Rules and Regulations, where the Company's distribution mains are suitable for supplying the desired service.

PUBLIC, INDUSTRIAL & INSTITUTIONAL "PII" SERVICE
Schedule No. 2

AVAILABILITY

Available to any public, industrial or institutional customer within all areas served by Navitas TN NG, LLC, Jellico Division.

BASE RATE (1)

Customer charge per month	\$6.00
First 9 Ccf per month(2)	\$ .25 per Ccf
Commodity charge	\$.0.30 per Ccf

(1) The cost of purchased gas is not included in the base rate/non-commodity charge.

(2) The charge for the first 9 Ccf per month is in addition to the per Ccf charge per customer class for the first 9 Ccf. For example, if a customer uses 10 Ccf in a month, the charge will be \$6.00 (customer charge) plus \$0.25 per Ccf for the first 9 Ccf plus \$0.30 per Ccf for the first 9 Ccf then \$0.30 for the 10th Ccf used that month, for a total non-commodity charge of \$11.25.

CUSTOMER MONTHLY CHARGE

A monthly charge for gas delivered from the time of initial service until termination at the customer's request will be billed, unless there is a temporary discontinuance of service in which case there will be a reconnect charge.

PAYMENT TERMS

All bills for service are due upon presentation and the above stated net rate shall be allowed if payment is made on or before the last day for payment as specified on the bill. Payments made after that day shall be for the gross amount plus five percent (5%) of the net bill.

ADJUSTMENTS

Bills for service are subject to adjustment for changes in the cost of purchased gas. Purchased gas adjustments and all applicable taxes and fees are in addition to the above rate.

Issued by: Thomas Hartline
Secretary

Effective:

Docket No.

EXHIBIT B

TN pro forma income statement

	Monthly Quantity	Monthly Price	Monthly Total	Annual Total	
Rates					
Proposed					
Customer charge	530	6	3,180	38,160	$6 per month customer charge
Surcharge units 1-9	3,964	0.25	991	11,892	plus $0.25 per month surcharge on 1st nine units
Flow				50,052	(Quantity reflects that not all customers will use nine units each month)
Metro > 49					
City 35-49					
Town 20-34					
Community 1-19		0.370			Flow tariff unchanged
Byrdstown	3,505	0.370	1,297	15,562	(0.37 is the average over all use,
Fentress	371	0.370	137	1,645	actual tariff is either 0.30 or 0.40)
Jellico	40,333	0.370	14,923	179,080	
				196,287	
				246,339	
Commodity charge				371,355	

<u>Proposed pro forma income statement</u>

Revenue	$ 617,694	
Commodity cost	371,355	
Non commodity revenue	246,339	
Direct costs	315,542	
Depreciation	18,427	Book net plant w/a 40 year life
Total operating costs	333,969	
Operating income	(87,629)	
Income taxes		
Net income	$ (87,629)	

EXHIBIT B

EXHIBIT C

NOTICE OF HEARING ON NAVITAS TN NG, LLC'S PETITION FOR EMERGENCY RELIEF FOR NATURAL GAS RATES

Navitas TN NG, LLC has filed a Petition for Emergency Relief with the Tennessee Regulatory Authority (the "Authority") in Docket No. 11-00060 requesting immediate adjustment of natural gas rates. Since acquiring control of the gas utility systems of Gasco Distributions Systems, Inc. in Jellico, Campbell County, Byrdstown, Pickett County, and Fentress County, Tennessee and Whitley County, Kentucky, the system has continued to operate at a substantial loss. At the time of the acquisition by Navitas of Gasco, Gasco operated as a Debtor in Possession while in proceedings before the United States Bankruptcy Court for the Southern District of Ohio. Navitas adopted all of Gasco's existing tariffs in which an adjustment is overdue. To ensure safe and reliable gas service prior to filing a formal rate case with the Authority, Navitas is requesting the Authority's approval to implement a temporary monthly customer charge of $6.00 and surcharge of $0.25 per 9 Ccf per month in addition to the current tariff. The relief sought is estimated to reduce the operating losses of Navitas until a formal rate adjustment is approved. Its customers, regardless of where they are located on the system, will experience an increase in their gas costs of $6.00 to $8.25 per month depending on usage.

The Petition for Emergency Relief has been set for hearing before the Authority at August 1, 2011 at 1:00 p.m. (CST) in the Hearing Room on the Ground Floor of the Offices of the Tennessee Regulatory Authority at 460 James Robertson Parkway, Nashville Tennessee.

NOTICE IS FURTHER GIVEN that all interested persons may appear at the Hearing and be heard, and that after the Hearing on emergency rate relief, the TRA, regardless of the relief requested in the Petition for Emergency Relief shall issue such Orders and grant such relief as it deems to be proper, necessary, fair, reasonable and equitable in the premises, whether or not specifically prayed for in the Petition for Emergency Relief.

For further information regarding Navitas TN NG, LLC's Petition, contact Klint W. Alexander, Wyatt, Tarrant & Combs, LLP, 2525 West End Avenue, Suite 1500, Nashville, TN 37203 (615) 244-0020; or Mary Kathryn Kunc, 6011 N. Robinson, Oklahoma City, Oklahoma 73118, 405-848-5534, attorneys for Navitas TN NG, LLC; or J. Richard Collier, General Counsel, Tennessee Regulatory Authority, 460 James Robertson Pkwy, Nashville, TN 37243-0505, 615-741-9934.

A copy of this Notice, the Petition and related documents are on file with the TRA and are open to public inspection.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 26, 2012

IN RE:	)	
	)	
PETITION OF NAVITAS TN NG, LLC FOR	)	**DOCKET NO.**
APPROVAL OF NEGOTIATED FRANCHISE	)	**12-00011**
AGREEMENT WITH CITY OF JELLICO,	)	
TENNESSEE PURSUANT TO TENNESSEE CODE	)	
ANNOTATED 65-4-107	)	

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]

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[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).

<u>FINDINGS AND CONCLUSIONS</u>

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

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE
May 22, 2012

IN RE:	)	
	)	
PETITION OF NAVITAS TN NG, LLC FOR APPROVAL TO BOOK AS A REGULATORY ASSET ITS COSTS ASSOCIATED WITH ITS DISTRIBUTION INTEGRITY MANAGEMENT PROGRAM	))))))	**DOCKET NO. 12-00020**
	)	

ORDER GRANTING REQUEST FOR DEFERRED ACCOUNTING

This matter came before Chairman Kenneth C. Hill, Director Sara Kyle, and Director Mary W. Freeman of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on May 7, 2012 for consideration of the Petition filed by Navitas TN NG, LLC ("Navitas") on March 8, 2012. In its Petition, Navitas requests Authority approval to book as a regulatory asset its costs associated with implementation of its Distribution Integrity Management Program ("DIMP").

Background and Petition

Navitas, a Kentucky Limited Liability Company, is in the business of distributing and selling natural gas to residential, commercial and agricultural customers in Jellico, Campbell County, Byrdstown, Pickett County and Fentress County, Tennessee and Whitley County, Kentucky.

On March 8, 2012, Navitas filed its Petition requesting that the Authority make findings that its Gas DIMP is mandatory and necessary for each of Navitas's subsystems and that hiring TriStar Energy Consultants ("TriStar") is a necessary and prudent investment for Navitas to meet the requirements for the DIMP and other pipeline safety plans. Navitas also requests that it be permitted to book the costs associated with preparing and implementing the DIMP as regulatory assets and to amortize the booked amount over a five year period.

The DIMP was developed pursuant to the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006 in an effort to reduce pipeline accidents, deaths and injuries by requiring operators to identify risks that are specific to their system and put measures in place to keep these risks from happening. Navitas has two sub-systems in Tennessee, the Jellico System and the Byrdstown System, and each must have a separate DIMP plan that must be submitted to and approved by the Authority.

The Company states that because of the complexity of the DIMP plans and the importance of ensuring that the plans comply with federal law, it has retained an experienced consultant, TriStar, to assist in preparing the DIMP plans. Navitas notes that it sought out other consultants but ultimately selected TriStar to implement its DIMP because TriStar, in addition to meeting the long-term contract preferred by the Company, also negotiated other cost savings and demonstrated a clear understanding of the goals of the compliance document effort.

Findings and Conclusions

At a regularly scheduled Authority Conference held on May 7, 2012, the panel considered the Petition. The panel found that the proposed treatment of the unusual and infrequent expenses is an accepted regulatory accounting treatment and is consistent with previous Authority rulings with respect to the deferral of certain costs.[1] In approving the request for deferral, the panel also specifically stated that the deferral of these costs does not equate to a

[1] *See In re: Petition of Lynwood Utility Corporation for Approval of a Cost Recovery Mechanism for Deferred Odor Elimination Costs*, Docket No. 08-00060, Order Approving Settlement Agreement (April 17, 2008). *See also In re: Petition of Kingsport Power Company d/b/a AEP Appalachian Power Company to Defer Certain Costs Associated with Winter Storms Occurring in December 2009*, Docket No. 10-00144, *Order Granting Request for Deferred Accounting* (October 5, 2010).

determination that the Company will be allowed to recover such costs when they are considered by the Authority. Thereafter, based on the record, the panel voted unanimously to allow Navitas to defer costs associated with implementing its DIMP, including the costs associated with hiring a consultant.

IT IS THEREFORE ORDERED THAT:

The Petition filed by Navitas TN NG, LLC is granted, in part, allowing Navitas to book as a regulatory asset the costs associated with preparing and implementing the Distribution Integrity Management Program and to amortize the booked amount over a five year period. All other relief requested in the Petition that is inconsistent with this Order is denied.

Kenneth C. Hill, Chairman

Sara Kyle, Director

Mary W. Freeman, Director