

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 18, 2013

IN RE:

**PETITION OF NAVITAS TN NG, LLC FOR A
GENERAL RATE INCREASE**

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**DOCKET NO.
12-00068**

PRE-HEARING ORDER

This matter came before the Hearing Officer during a Pre-Hearing Conference with the parties, Navitas TN NG, LLC (“Navitas”) and the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”), conducted in accordance with Tenn. Code Ann. § 4-5-306 on January 15, 2013.

RELEVANT PROCEDURAL BACKGROUND

On July 2, 2012, Navitas, a natural gas local distribution company under the jurisdiction of the Authority, filed a *Petition for an Adjustment to Its Natural Gas Rates and Approval of Revised Tariffs* (“*Petition*”) requesting a general rate increase of approximately \$390,000 annually for its service to the communities of Jellico and Byrdstown, Tennessee, and the County of Fentress, Tennessee.¹ In its *Petition*, Navitas proposes to implement its proposed rate increase in four annual increments.² Following its initial filing, Navitas supplemented the docket file with information required to review and analyze its *Petition* on July 3, 2012 and August 7, 2012.

On July 6, 2012 the Consumer Advocate filed a *Petition to Intervene* in the proceedings. On August 10, 2012, a *Notice of Status Conference* was issued setting a Status Conference

¹ *Petition*, p. 4, ¶ 8 (July 2, 2012).

² *Id.* at ¶ 9.

immediately following the Authority Conference on August 20, 2012. At a regularly scheduled Authority Conference held on August 20, 2012, the voting panel assigned to the docket voted unanimously to convene a contested case proceeding and appoint General Counsel or her designee as Hearing Officer for the purpose of preparing the case for hearing before the panel, including making an initial determination on the commencement of the six-month statutory deadline under Tenn. Code Ann. § 65-5-103.

During a Status Conference with the parties on August 20, 2012, noticed on August 10, 2012 and held immediately following the Authority Conference, the Hearing Officer granted the *Petition to Intervene*, deferred consideration of certain requests for *Pro Hac Vice*, and ruled that the commencement date of the six-month statutory deadline is August 7, 2012.³ Thereafter, on August 21, 2012, the Hearing Officer entered a Protective Order in the docket file, and, on August 31, 2012, issued an *Order Setting Procedural Schedule*.

On September 7, 2012, in accordance with TRA rules, Navitas filed motions for admission *Pro Hac Vice* requesting permission for its legal counsel residing outside the state of Tennessee, Ron Comingdeer and Mary Kathryn Kunc, to participate in the proceedings. On September 12, 2012, the Hearing Officer granted both motions. With only minor amendments to the procedural schedule, made at the request of the parties, the exchange of discovery and filing of pre-filed testimony proceeded efficiently with the cooperation of the parties.

On December 17, 2012, the parties filed a *Stipulation and Settlement Agreement* (“*Settlement*”) for the consideration of the Authority. On December 18, 2012, a *Notice of Hearing* was issued scheduling a hearing before the Authority panel on January 7, 2013. On January 2, 2013, Navitas filed proof of its compliance in accordance with the Authority’s

³ *Order on August 20, 2012 Status Conference* (September 11, 2012).

publication rules.⁴ In response to certain data requests issued by TRA Staff, the Consumer Advocate filed revised schedules to the *Settlement* and an errata to the Direct Testimony of Charlena Aumiller on January 4, 2013.⁵

On January 7, 2013, the parties filed an *Amendment to Stipulation and Settlement Agreement Dated December 17, 2013* (“*Amendment*”). Later that day, during the hearing, which was convened as noticed, the Authority panel heard from the parties concerning the *Settlement* and *Amendment* and invited the public to comment. Thereafter, due to the late filing of the *Amendment*, made just earlier that day, the panel voted unanimously to defer further discussion and consideration of the settlement, as amended, to a future Authority Conference in order to allow sufficient time for review.

On January 8, 2013, at the request of the parties, the Hearing Officer held a telephone conference with the parties. During the telephone conference, for procedural efficiency and in light of the impending statutory six-month deadline, the parties requested that the Directors convene a Special Conference to consider their *Settlement* and *Amendment*. On December 10, 2013, the Hearing Officer issued a *Notice of Pre-Hearing Conference* scheduling a pre-hearing conference with the parties on January 15, 2013, and entered an *Order Suspending Tariff through February 14, 2013*.

PRE-HEARING CONFERENCE

Thereafter, the pre-hearing conference began on January 15, 2013, as noticed, in the Hearing Room on the Ground Floor of the Tennessee Regulatory Authority at 460 James Robertson Parkway, Nashville, Tennessee. The parties in attendance were as follows:

⁴ On January 7, 2013, Navitas filed an amended proof of publication, which included reference to the requirement that a utility post notice of its proposed rate changes at each of the utility’s offices under TRA Rule 1220-04-01-.05.

⁵ On January 17, 2013, the Consumer Advocate filed a redlined version of the revisions made to Ms. Aumiller’s Direct Testimony.

For Navitas:

Klint W. Alexander, Esq., Wyatt, Tarrant & Combs, LLP, 2525 West End Avenue, Suite 1500, Nashville Tennessee 37203, and via telephone, **Thomas Hartline**, President & Treasurer, Navitas Utility Corporation, 3186 – D Airway Avenue, Costa Mesa, CA 92626; and

For the Consumer Advocate:

John J. Baroni, Esq. and Charlena Aumiller, Esq., Office of the Attorney General, Consumer Advocate and Protection Division, 425 5th Ave. N, John Sevier Building, P.O. Box 20207, Nashville, TN 37243.

In accordance with Tenn. Code Ann. § 4-5-306, the pre-hearing conference was held to establish or resolve certain matters prior to the commencement of a hearing on the merits, including any outstanding procedural matters or pending motions and the orderly conduct of the hearing.

I. Pending Motions

Joint Motion for Special Conference

During a telephone conference, held at the request of the parties, on January 8, 2013, Navitas and the Consumer Advocate requested that a Special Conference of the Authority be convened to consider their settlement agreement, as amended, and in the event the settlement is not approved, to hear the matter on its merits. The Hearing Officer communicated the parties' request to the TRA Executive Director. After considering the request and determining the availability of the Directors, the Hearing Officer was informed that the request for a Special Conference was declined and that the hearing would be reconvened on **February 13, 2013 at 10:00 a.m.** The parties were informed of this decision during the pre-hearing conference.

II. Procedural Deadlines

Following discussion, the parties agreed to the following procedural deadlines:

Due Date	Filing
January 22, 2013	Pre-filed supplemental rebuttal testimony by Navitas (limited to the Errata to Charlena Aumiller's Direct Testimony, filed on January 4, 2013, and also set forth in a redline version filed on January 17, 2013)
Interim - TBD by agreement of the parties	Parties will exchange exhibits/visuals/charts to be used during the hearing & work together in an effort to resolve any objections to exhibits and other evidentiary concerns (if any)
February 5, 2013	Motions in Limine Due (if any)

III. Order of Proof

Finally, the length and timing of the order of proof was discussed. The following order of the hearing was then established and agreed upon:

Public comments	if any
Opening Statement:	Navitas (10 minutes)
Opening Statement:	Consumer Advocate (10 minutes)
<u>Navitas witness</u>	Thomas Hartline, President of Navitas
*Witness Summary of Direct	Limited to 30 minutes
Cross-examination	Consumer Advocate
Questions	TRA Staff ⁶
Re-direct examination	Navitas

⁶ While the Directors may ask questions at any time, the parties agreed to allow Staff of the TRA to directly question a witness between cross and re-direct examination.

Consumer Advocate witness**Chris Klein, Economist**

*Witness Summary of Direct

Limited to 10 minutes

Cross-examination

Navitas

Questions

TRA Staff

Re-direct examination

Consumer Advocate

Consumer Advocate witness**Charlena Aumiller, CPA**

*Witness Summary of Direct

Limited to 10 minutes

Cross-examination

Navitas

Questions

TRA Staff

Re-direct examination

Consumer Advocate

Public comments

if any

Closing Argument:

Navitas (15 minutes total)

Closing Argument:

Consumer Advocate (15 minutes)

Rebuttal (if any)

Navitas (with time reserved)

Final public comments

if any

*All witnesses are subject to recall for rebuttal purposes.

IT IS THEREFORE ORDERED THAT:

1. The joint motion for a special conference, made verbally by the parties during a telephone conference with the Hearing Officer on January 8, 2013, is denied.

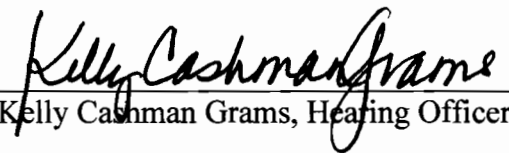
2. The procedural deadlines, specifically as to the filing of supplemental rebuttal testimony by Navitas and motions in limine, are adopted as set forth in § II herein above.

3. Originally convened during the Authority Conference held on January 7, 2013, the panel will reconvene the hearing in this matter at **10:00 a.m. CST on February 13, 2013**, to

consider the *Stipulation and Settlement Agreement* and *Amendment* filed by the parties in this docket on December 17, 2012 and January 7, 2013, respectively.

4. In the event that the settlement agreement, as amended, is not approved by the panel, the Hearing will proceed immediately thereafter on the merits.

5. Should the matter proceed to a hearing on the merits, the order of proof is adopted as set forth in § III herein above.


Kelly Cashman Grams, Hearing Officer