

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

IN RE:)
)
PETITION OF NAVITAS TN NG, LLC)
FOR AN ADJUSTMENT TO ITS) **Docket No. 12-00068**
NATURAL RATES AND APPROVAL OF)
REVISED TARIFFS)

**CONSUMER ADVOCATE'S MOTION TO STRIKE
AMENDED REBUTTAL TESTIMONY OF THOMAS HARTLINE**

The State of Tennessee, by and through Attorney General and Reporter Robert E. Cooper, Jr., on behalf of the Tennessee Consumer Advocate and Protection Division ("Consumer Advocate"), moves to strike the Amended Rebuttal Testimony of Thomas Hartline. Mr. Hartline's Amended Rebuttal Testimony exceeds the scope of what was agreed to by the Parties and Ordered by the Tennessee Regulatory Authority ("TRA"). In support of its Motion to Strike, the Consumer Advocate states:

1. On January 5, 2013, in TRA Docket No. 12-00068, Navitas TN NG, LLC ("Navitas") and the Consumer Advocate participated in a Pre-Hearing Conference conducted in accordance with Tenn. Code Ann. § 4-5-306.

2. During that Conference, the Parties discussed Navitas's desire to file amended rebuttal testimony to respond to the Consumer Advocate's 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 ("Errata").

3. Ms. Aumiller's Errata specifically corrected a clerical error learned as a result of the TRA's Second Data Request (dated January 2, 2013), question number 3. The third question of the TRA's Second Data Request and the Consumer Advocate's Response was:

Refer to the Settlement Exhibits attached to the Stipulation and Settlement Agreement in Exhibit A. Is the Depreciation & Maintenance Expense amount on line 7 of Schedule 4 also included as part of the Operations & Amortization Expense amount on line 5 of Schedule 4? If the answer is no, please explain the amounts identified as Depreciation and Amortization on Schedule 4.A. If the answer is yes, provide revised schedules removing Depreciation and Amortization Expense from Operations and Maintenance Expense (also, please do not include DIMP costs in these schedules).

RESPONSE: Yes. Revised schedules are attached.

4. The Consumer Advocate's corrections pertained specifically to the Depreciation & Maintenance Expense amount on line 7 of Schedule 4 and the Operations & Amortization Expense amount on line 5 of Schedule 4.

5. The Errata made specific revisions to Ms. Aumiller's Direct Testimony as follows:

Page 8, Line 8 - \$666,179 is amended to \$670,304;
Page 8, Line 13 - \$355,387 is amended to \$313,929;
Page 9, Line 4 - \$690,122 is amended to \$648,867;
Page 9, Line 6 - 96% is amended to 80.5%;
Page 9, Line 13 - \$140,000 is amended to \$180,000;
Page 10, Line 12 - \$250,000 is amended to \$207,827;
Page 134, Line 23 - \$666,179 is amended to \$670,304;
Page 13, Line 24 - \$666,179 is amended to \$670,304;
Page 134, Line 27 - \$8,250 is amended to \$4,125;
Page 17, Line 17 - amendemnts is amended to amendments;
Page 18, Line 12 - \$29,029 is amended to 29,205;
Page 18, Line 13 - \$57,997 is amended to \$58,356;
Page 18, Line 13 - 1.999 is amended to 1.998; and
Page 27, Line 27 - \$250,000 is amended to \$181,090

6. The "redline" version of Ms. Aumiller's testimony filed on January 17, 2013, only reflected the 14 revisions set forth in the Errata. All the revisions, except for correcting a spelling error, pertained specifically to modify Ms. Aumiller's testimony as originally filed to

incorporate the change and results to the Depreciation & Maintenance Expense amount on line 7 of Schedule 4 and the Operations & Amortization Expense amount on line 5 of Schedule 4.

7. In the TRA's Pre-Hearing Order dated January 18, 2013, under Paragraph II, Procedural Deadlines, Navitas and the Consumer Advocate agreed that Navitas would file "pre-filed supplemental rebuttal testimony" **"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"** (emphasis added).

8. On January 22, 2013, Mr. Hartline filed Amended Rebuttal Testimony consisting of approximately 200 pages of testimony and exhibits, the bulk of which is well beyond the scope of the Pre-Hearing Order of January 18, 2013 and the agreement between the parties before the Hearing Officer on January 15, 2013.

9. None of Mr. Hartline's Amended Rebuttal Testimony refers to the revised schedules incorporated in Ms. Aumiller's Errata.

10. Mr. Hartline mentions depreciation in his 6th Q&A on page 3. But the discussion does not appear to relate to the Depreciation & Maintenance Expense amount on line 7 of Schedule 4 and the Operations & Amortization Expense amount on line 5 of Schedule 4.

11. Mr. Hartline also mentions depreciation on page 9. But again, the discussion does not appear to relate to the Depreciation & Maintenance Expense amount on line 7 of Schedule 4 and the Operations & Amortization Expense amount on line 5 of Schedule 4.

12. Notably, in the 18th Q&A on page 13, Mr. Hartline proposes to modify Navitas's request in its Petition (page 4, ¶ 8 (July 2, 2012)) and restated in Mr. Hartline's Rebuttal

testimony filed on November 30, 2012 (7th Q&A, page 3) for a \$390,000 rate increase to a new request for an increase of \$296,869. Perhaps this decrease relates to the Depreciation & Maintenance Expense amount on line 7 of Schedule 4 and the Operations & Amortization Expense amount on line 5 of Schedule 4. If so, the Amended Rebuttal Testimony is not clear on this point.

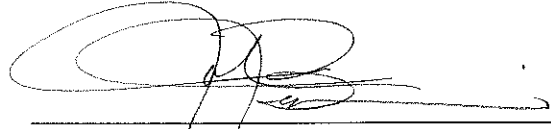
13. In addition to Mr. Hartline's testimony, he references and attaches two exhibits purporting to be an excerpt of a James E. Sueltflow textbook on [ratemaking accounting] *Public Utility Accounting: Theory and Application* (Institute of Public Utilities, Michigan State University: 1973) (Exhibit A referenced in footnote 1 on page 9) and Part 201 of the Uniform System of Accounts ("USOA") (Exhibit B on page 10). Not only are these documents arguably hearsay, but they are incomplete; moreover, Mr. Hartline has not been presented as an expert on accounting. The Pre-hearing Order in this matter certainly did not contemplate cross examination of Mr. Hartline on the contents of these exhibits. The Consumer Advocate is prepared to do so if necessary and if Mr. Hartline confirms he is competent to be cross examined on those exhibits.

14. In addition, there are portions of Mr. Hartline's Amended Rebuttal Testimony that the Consumer Advocate contends mischaracterize certain positions the Consumer Advocate has maintained in this proceeding. In the event that the TRA does not strike Mr. Hartline's Amended Rebuttal Testimony because it violates the Pre-Hearing Order, the Consumer Advocate will file a separate motion seeking to strike or exclude specific testimony.

WHEREFORE, the Consumer Advocate respectfully requests the TRA grant the Consumer Advocate's Motion to Strike Mr. Hartline's Amended Rebuttal Testimony as well as

any other relief deemed just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Baroni', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

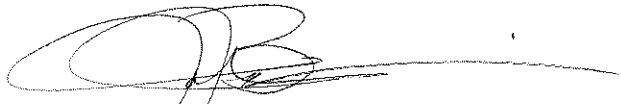
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This the 24th day of January, 2013.



JOHN BARONI