

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

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

**NAVITAS TN NG, LLC'S RESPONSE TO CONSUMER ADVOCATE'S
MOTION TO STRIKE AMENDED REBUTTAL TESTIMONY OF
THOMAS HARTLINE**

COMES NOW Petitioner NAVITAS TN NG, LLC ("Navitas"), by and through counsel, and hereby submits this Response to the Consumer Advocate's ("CAPD") Motion to Strike the Amended Rebuttal Testimony of Thomas Hartline requesting the Authority to deny the CAPD's motion, or in the alternative limit it limit to exclude Exhibits A & B which accompany the Amended Rebuttal Testimony of Thomas Hartline. Navitas states as follows:

I. General Background and Procedural History

1. On July 2, 2012, Navitas 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 natural gas service to the cities of Jellico and Byrdstown, Tennessee and the County of Fentress, Tennessee.
2. Following some discovery, on November 15, 2012, the CAPD filed Christopher Klein's Direct Testimony.
3. On November 21, 2012, the CAPD filed Charlena Aumiller's Direct Testimony and Christopher Klein's Amended Direct Testimony.

4. On November 30, 2012, Navitas filed Thomas Hartline's Rebuttal Testimony reiterating the amount sought in Navitas' Petition, which included, but was not limited to, testimony regarding taxes, acquisition adjustment costs, and attorney fees and expenses from prior interim proceedings.

5. On December 17, 2012, Navitas and the CAPD filed a Stipulation and Settlement Agreement ("Agreement") with the Authority. The most important aspect of the Agreement was the settlement amount reached between the parties which represented the sum of \$272,601.00.¹ In reaching this Agreement, Navitas compromised on several issues, which reduced the sum in which Navitas was seeking in this proceeding from \$390,000.00 to the settlement amount of \$272,000.00. Many assumptions were made about revenues, expenses, interest, and costs (including Depreciation & Maintenance expenses, Operations & Amortization expenses, DIMP costs, taxes, acquisition adjustment expenses, and attorneys' fees and expenses incurred during the interim 2011 rate adjustment proceeding, among other expenses) in reaching agreement on the \$272,000.00 figure. Some, but not all of these items described above, were addressed in the exhibits to the Agreement prepared by the CAPD and filed with the Authority. Notably, the costs associated with taxes, acquisition adjustment expenses, and attorneys' fees and expenses incurred during the interim 2011 rate adjustment proceeding, were not included or factored into the CAPD's calculation or exhibits.

6. Following the filing of the Agreement with the Authority, on or about December 20, 2012, the parties received a Data Request from the Authority's staff requesting additional information concerning the Agreement. One data request drew the attention of the CAPD to a major *computational* error in the calculations it made in Ms.

¹ See Stipulation and Settlement Agreement (December 17, 2013), at 6, ¶ 14.

Aumiller's original testimony and the exhibits in support of that testimony and the Agreement.² Specifically, Ms. Aumiller's testimony and exhibits contained calculation errors for certain expenses that had a direct effect on the overall revenue deficiency and amount agreed to by the parties in the original Settlement Agreement. In correcting the computational error, the adjustment in the revenue deficiency amount was substantial, reducing the amount by approximately one-fifth (1/5) of the figure supported by Ms. Aumiller's original testimony and the amended testimony of Christopher Klein.

7. On January 4, 2013, the CAPD submitted "Revised Testimony to Correct a Clerical Error in the Direct Testimony and Exhibits of Charlena S. Aumiller on Behalf of the CAD" ("Amended Testimony"). The Amended Testimony provided figures and calculations supporting a rate increase in an amount substantially less than the amount Navitas was seeking in its original Petition, and more importantly, approximately one-fifth (1/5) less the amount that was agreed to by the parties in the original Settlement Agreement.

8. On January 7, 2013, the parties submitted a Modified Stipulation and Settlement Agreement ("Modified Agreement") in which the settlement amount was reduced from \$272,601 to \$231,703, reflecting the correction for the computational errors in Ms. Aumiller's testimony. In view of the last-minute filing of the Modified Agreement, the Authority continued the hearing on the matter scheduled for January 7, 2013 to February 13, 2013.

The characterization of the mistake in the CAPD's amended testimony and exhibits as a "clerical error" is a gross understatement. The spelling mistake on page 17, Line 17 is a clerical error. The other corrections to computational errors made throughout Ms. Aumiller's testimony and exhibits are substantial and have a direct effect on depreciation, expenses, revenue deficiency and, ultimately, the settlement amount reached by the parties.²

9. On January 15, 2013, Navitas and the CAPD participated in a Pre-Hearing Conference. During that conference the parties discussed Navitas's desire to file amended rebuttal testimony to respond to the amended testimony of Ms. Aumiller filed on January 4, 2013. According to the transcript of that hearing, Navitas never agreed to provide a redline version of the amended rebuttal testimony of Thomas Hartline, but to limit its rebuttal testimony to the scope of Ms. Aumiller's amended testimony, which could be "construed very broadly." Transcript of Proceedings, January 5, 2013, p. 19, Lines 10-25 & p. 20, Lines 1-6. A copy of the Transcript of Proceedings is affixed hereto as **Exhibit A**. As described above, the scope of the computational changes made by Ms. Aumiller goes beyond the narrow reference to "Depreciation and Maintenance Expense" and "Operations and Amortization Expense" asserted in the CAPD's Motion and must take into account the ripple effect caused by those changes to the revenue deficiency, expenses and other numbers resulting in the final rate adjustment figure. *See* CAPD Motion to Strike, at ¶ 6.

10. The ripple effect caused by the discovery and corrections made to the computational errors in the original Settlement Agreement reopened a few key issues for Navitas that were (1) compromised by Navitas in reaching the original settlement amount of \$272,601; (2) excluded from Ms. Aumiller's original testimony relied upon to support the original Agreement, and (3) are now important for Navitas to assert in the event that the Authority does not approve the Amended Settlement Agreement and the parties are forced to proceed with the rate case.

II. Specific Issues in Response to Motion to Strike

11. The characterization of the mistake in the CAPD's amended exhibits as a "clerical error" is a gross understatement. The spelling mistake on page 17 is a clerical error. The other corrections to errors made throughout Ms. Aumiller's testimony and exhibits are substantial and all-encompassing. These corrections dramatically reduced the amount of the rate adjustment that the CAPD would support in this proceeding after Navitas had showed its hand, made compromises on key issues, and relied on the CAPD's data to reach a settlement agreement in the first place in the amount of \$272,601. Without disclosing the details of those negotiations, suffice it say that Navitas accepted the figure \$272,601 because the number covered certain costs, expenses, interest and taxes that Navitas was seeking in its calculations regardless of how the CAPD arrived at its figure. The fact that the CAPD prepared and filed original testimony and exhibits showing its calculations in support of the original settlement agreement – calculations which contained computational errors – was of less concern to Navitas because the sum total of \$272,601 was the main issue to Navitas. Given the ripple effect caused by the computational errors contained within Ms. Aumiller's testimony and the exhibits to the Settlement Agreement, denying Navitas the opportunity to provide rebuttal testimony that addresses those issues within the scope of the computational corrections and the concomitant substantial reduction in the rate adjustment amount reflected in the amended settlement agreement would be tantamount to the denial of due process.

12. On January 22, 2013, the Amended Rebuttal Testimony of Thomas Hartline was filed with the Authority. The bulk of Mr. Hartline's Rebuttal Testimony (to which there is no indicated objection in the Motion to Strike) and Amended Rebuttal Testimony focuses on Acquisition Adjustment and Other long-term assets. These issues

have an effect on the rate base, and, therefore, are directly related to depreciation and the revenue requirement. As such, the amended rebuttal testimony of Thomas Hartline directly addresses the following computational corrections made in the Errata:

Page 8, Line 8, change in rate base

Page 8, Line 13, change in expenses

Page 9, Line 4, change in revenue requirement

Page 9, Line 6, margin change in revenue (this is a secondary calculation, disagreement lies with the primary calculations elsewhere)

Page 9, Line 13, change in revenue deficiency difference (this is a secondary calculation, disagreement lies with the primary calculations elsewhere)

Page 10, Line 12, revenue deficiency changes producing a return

Page 13, Line 23, rate base changes

Page 13, Line 24, rate base changes

Page 17, Line 17, clerical error

Page 18, Line 12, change in interest expense (this is a secondary calculation, disagreement lies with the primary calculations elsewhere)

Page 18, Line 13, change in operating income

Page 18, Line 13, change in times interest expense (this is a secondary calculation, disagreement lies with the primary calculations elsewhere)

Page 27, Line 27, revenue deficiency changes

Specifically, those changes highlighted in bold print and, in particular, the change denoted by underline above directly impact depreciation and the revenue deficiency.

13. The January 22 rebuttal testimony of Thomas Hartline is presented in question and answer format. Those questions can be divided up as follows:

- Q1, 2, 9, 20, & 22 (Context) – These are context questions used for set-up, transition, or summary and are presented to facilitate reading of the amended testimony. There is no point objecting to them as the technical information is contained elsewhere.

- Q3, 4, 5, 6, 7, 8, 18, 19, & 21 (Return) – These are discussions about the return and, therein, is the heart of the matter on Page 10. Navitas does not believe the computational changes made to Ms. Aumiller's testimony remotely produce the return contemplated in the Amended Testimony of Christopher Klein nor does it reflect the baseline assumptions made by the CAPD to reach the original settlement amount of \$272,060 as indicated in Ms. Aumiller's original testimony and exhibits. To reduce the revenue deficiency from \$250,000 to \$207,827 without allowing Navitas the opportunity to raise or reemphasize the issues of acquisition adjustment, taxes and other expenses which were excluded from the math underpinning the \$250,000 revenue deficiency figure (and thereby the \$272,060 settlement amount) is to ask Navitas to take a 20 percent hit or reduction in rate increase after the fact without being able to rebut the formula used, the presumptions made, or factors excluded by the CAPD.

- Q10, 11, 12, 13, 14, 15, 16 (Reiteration) – These are simply a reiteration of the prior rebuttal testimony filed on November 30, 2012. The Reiteration questions tie to depreciation and rate base and, therefore, touch directly on the corrections made to Ms. Aumiller's testimony on Pages 8, 9, 10, 13, & 18.

- Q17 (Summary) – This is simply a monetary summary of the key issues. It is unclear why one would object to Navitas providing the Authority with this mathematical summary of its position considering the fact that the Authority may not approve the amended settlement agreement which contains revised mathematical calculations of its own in support of the substantially modified settlement sum.

14. Regarding paragraph 13 of the CAPD's Motion to Strike, Navitas is willing to concede that Exhibits A & B be excluded.

15. It is not clear from paragraph 14 of the CAPD's Motion to Strike which "portions of Mr. Hartline's amended rebuttal testimony mischaracterizes the CAPD's position without more specific information."

16. Further, it is not practical nor efficient to restrict Mr. Hartline's amended rebuttal testimony to redline edits only. The oral transcript shows that Navitas never agreed to provide a redline document as such a format would be too restrictive and unworkable given the issues raised by the substantial computational errors made in Ms. Aumiller's testimony. To force Navitas to prepare a redline document only is to prioritize form over substance and deny Navitas the opportunity to prepare rebuttal testimony covering key issues within the scope of the corrections made to the testimony of Ms. Aumiller, which underpin the formula used to produce the amended settlement agreement.

WHEREFORE, Navitas respectfully requests the Authority to deny the CAPD's Motion to Strike in its entirety, or in the alternative, to limit the CAPD's motion to exclude Exhibits A & B which accompany the Amended Rebuttal Testimony of Thomas

Hartline. Further, Navitas requests that an expedited hearing being set on this matter before the Hearing Officer.

Dated this the 31st day of January, 2013.

RESPECTFULLY SUBMITTED,



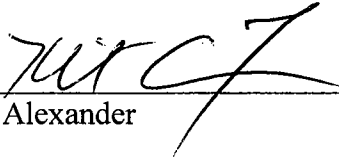
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CERTIFICATE OF SERVICE

I hereby certify that on January 31st, 2013, a copy of the foregoing was filed in the above-captioned action. A copy will be served by regular U.S. Mail and electronic mail to:

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Klint Alexander

BEFORE THE TENNESSEE REGULATORY AUTHORITY
IN RE:)

)

PETITION OF NAVITAS TN NG, LLC) Docket No. 12-00068
FOR A GENERAL RATE INCREASE)

TRANSCRIPT OF PROCEEDINGS

Tuesday, January 15, 2013

APPEARANCES:

For Navitas TN NG, LLC: Mr. Klint W. Alexander
For Consumer Advocate Division: Mr. John J. Baroni
Reported By:

Patricia A. Jennings, LCR, RPR

Patricia A. Jennings, LCR, RPR

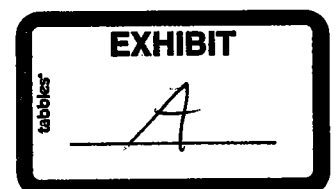
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1 (The aforementioned cause came on to be
2 heard on Tuesday, January 15, 2013, beginning at 10:00
3 A.M., before Ms. Kelly Cashman-Grams, Hearing Officer,
4 when the following proceedings were had, to-wit:)
5 MS. CASHMAN-GRAMS: All right, I
6 believe we have Mr. Hartline on the line. So we'll go
7 ahead and get started.
8 We're here today for a prehearing
9 conference --
10 MR. HARTLINE: Hello?
11 MS. CASHMAN-GRAMS: Mr. Hartline --
12 MR. HARTLINE: This is Mr. Hartline.
13 Can you hear me?
14 MS. CASHMAN-GRAMS: We can hear you.
15 If you want to just go ahead and put your phone on mute
16 for now, that will be great.
17 MR. ALEXANDER: Hey, Thomas, we're all
18 here.
19 MS. CASHMAN-GRAMS: Okay. We're here
20 today for a prehearing conference in Docket No.
21 12-00068, in re petition of Navitas TN NG, LLC for a
22 general rate increase.
23 I am Kelly Cashman-Grams, the hearing
24 officer in this docket. This conference was duly
25 noticed on January 10th, 2013 and is being conducted in

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1 accordance with Tennessee Code Annotated, Section
2 4-5-306.



3 Would the parties please introduce
4 themselves for the record.
5 MR. ALEXANDER: Klint Alexander,
6 counsel for Navitas.
7 MR. BARONI: John Baroni, Consumer
8 Advocate, with the Tennessee Attorney General.
9 MS. AUMILLER: Charlena Aumiller, the
10 analyst for the Consumer Advocate and Protection
11 Division.
12 MS. CASHMAN-GRAMS: Great. And then we
13 have Mr. Thomas Hartline on the telephone.
14 MR. HARTLINE: Yes. And Thomas
15 Hartline on the phone.
16 MS. CASHMAN-GRAMS: Thank you.
17 Okay. Now, you know, we're going to
18 have the prehearing conference just to work out the
19 details in the event the settlement is not approved.
20 So this is just all out of an abundance of caution, I
21 guess, so we can move right forward and not delay the
22 proceedings any further if such a thing were to happen.
23 Are there any issues that can be
24 simplified that the parties are aware of, anything we
25 need to know about?

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1 MR. ALEXANDER: Well, the question of a
2 special conference is what we're most interested in at
3 this point.
4 MS. CASHMAN-GRAMS: Yeah. Well --
5 okay. Well, we can start with that then. We'll lead
6 with that. I discussed your request that you made
7 verbally in our telephone conversation I believe on
8 January 8th with the executive director of the agency,
9 and he inquired of the directors of what their
10 preference was and their availability.
11 I have been advised since that the
12 directors felt that it would be fine to convene the
13 hearing on February 13th and not have a special
14 conference, but we will begin at 10:00 in the morning.
15 So we'll begin February 13th at 10:00.
16 And we'll start with the settlement conference or the
17 settlement agreement. The directors would consider
18 your agreement with the amendment.
19 And, you know, depending on what
20 happens from there, should the agreement not be

21 approved, we'd go right into hearing with witnesses.
22 So we need to work out, you know, the whole order of
23 proof and how that would go.

24 MR. ALEXANDER: Okay. And with respect
25 to notice, noticing the public for that particular

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1 hearing, would we need to do two separate notices or
2 one omni notice for the 13th and the 14th for the
3 settlement agreement and the possible hearing?

4 MS. CASHMAN-GRAMS: Well, the hearing
5 would occur on the 13th.

6 MR. ALEXANDER: Okay.

7 MS. CASHMAN-GRAMS: As would
8 deliberations, I believe, potentially. I think that
9 would be the goal.

10 MR. ALEXANDER: Okay. So the 13th is
11 scheduled -- the hearing right now, the docket call is
12 scheduled for the 13th at 1:00 P.M.; is that right?

13 MS. CASHMAN-GRAMS: Yes. We have the
14 authority conference. And I need to get a feel from
15 you how long you think a hearing might go. We've got
16 three witnesses. We'll talk about all that.
17 But we really have until probably
18 around noon, and then I would think the directors would
19 break for lunch. Start the conference. And then
20 either finish up the hearing, or, hopefully, we'll be
21 finished potentially, maybe. And then they'd move into
22 the next hearing, which would be Laurel Hills, which is
23 also that day.

24 MR. ALEXANDER: Okay. So all they've
25 done, basically, is move up the timeframe for the 13th

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1 from 1:00 to 10:00 with both --

2 MS. CASHMAN-GRAMS: They've only put
3 this docket on at 10:00. It's not part of the
4 conference. It's going to be a separate hearing that
5 may -- depending if it finishes or not, could spill
6 over into the afternoon to finish.

7 MR. ALEXANDER: Okay.

8 MR. BARONI: I have a question. In the
9 event that the settlement agreement as amended is
10 rejected by the directors, the issue of conduct and
11 conversations that occur during the settlement

12 negotiations could become an issue.
13 Would you consider -- and we haven't
14 talked about this, Klint. Would we consider -- could
15 you consider a continuing objection as to conduct and
16 conversations that occur during settlement I think
17 under Rule 408, which would make conduct and
18 discussions during those negotiations inadmissible?
19 Of course, if the directors have
20 questions, that's a different issue, but I think it's
21 something that we may discuss. Although, in the event
22 the settlement is not approved, it kind of puts the
23 parties in a very unusual position because not only are
24 we contractually bound to support the settlement, but I
25 think ethically and honor bound to do so as well as

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1 attorneys. So it kind of puts us into a very difficult
2 situation as -- as lawyers.

3 MS. CASHMAN-GRAMS: Well, I mean, my
4 understanding is that settlement discussions are not
5 considered. You know, that's not part of the
6 deliberations, not part of the considerations of the
7 directors at all.

8 If the settlement is not approved,
9 then, you know, you go forward with your case. The
10 settlement is no longer in play. I mean, you're not
11 bound to it anymore because it's been rejected because
12 it's been not approved.

13 MR. BARONI: So then the directors
14 would expect us to put on our case as pled?

15 MS. CASHMAN-GRAMS: As filed or --

16 MR. BARONI: As filed.

17 MS. CASHMAN-GRAMS: -- however you want
18 to proceed with it.

19 MR. BARONI: Okay.

20 MR. ALEXANDER: And that leads to the
21 next question. I think we mentioned in a previous
22 phone call in setting up this status conference that in
23 the event that we couldn't get a special conference on
24 a day before the 13th, we still would like the
25 opportunity to submit some additional rebuttal

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1 testimony to testimony that was submitted at the last
2 minute before the last hearing in preparation for

3 possible . . .

4 MS. CASHMAN-GRAMS: Okay. We can pick
5 a deadline for that.

6 MR. ALEXANDER: Okay. And we will
7 issue a notice then for the 13th at 10:00 A.M. to the
8 general public, which will mention both --

9 MS. CASHMAN-GRAMS: Yeah, you can --

10 MR. ALEXANDER: -- the modified
11 settlement agreement and the rate proceeding.

12 MS. CASHMAN-GRAMS: Yeah. I will issue
13 notice as well, and you can, you know, use that. It's
14 going to include both. It's going to lay out what's
15 going to happen. We'll start with the settlement
16 agreement. In the event, then we'll move to a hearing.

17 MR. ALEXANDER: Okay. When you say
18 you'll submit that, are you submitting that to the
19 public?

20 MS. CASHMAN-GRAMS: I'm going to issue
21 it just like I issue the other hearing notice, but
22 yeah, I don't do the newspaper publication. That would
23 be for the company to do.

24 MR. ALEXANDER: Okay. And the only
25 reason I ask that is because when that goes out is

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1 important to Navitas because the newspapers are weekly
2 newspapers, and they need things three days in advance
3 in order to get it to the public.

4 MS. CASHMAN-GRAMS: Yeah, you could
5 issue that today --

6 MR. ALEXANDER: Okay.

7 MS. CASHMAN-GRAMS: -- because this
8 is set.

9 MR. ALEXANDER: Okay.

10 MS. CASHMAN-GRAMS: And I will issue
11 that notice later today as well.
12 And just to remind you, we did convene
13 the last one as a hearing. So this is a reconvening of
14 the hearing. A lot of times we don't reissue a notice,
15 but I'm going to do that out of an abundance of
16 caution. And, you know, I would recommend the company
17 probably do that, too, with the publication.

18 MR. ALEXANDER: We are planning to do
19 that just to make sure that sufficient notice has been
20 provided.

21 MS. CASHMAN-GRAMS: Yeah, just because
22 of the way it's proceeded. You know, we didn't start
23 the hearing on the merits. It was consideration, which
24 was deferred. So just to be so it's clear what's going
25 on.

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1 MR. ALEXANDER: Okay.

2 MR. BARONI: Oh, I do have -- regarding
3 the order of proof, we don't believe that there would
4 be any changes, that Navitas would have the burden to
5 put on their case.

6 And I'm assuming that you just will
7 have Mr. Hartline as your witness.

8 MR. ALEXANDER: (Nods head up and
9 down.)

10 MR. BARONI: The state has filed direct
11 testimony of two witnesses, Ms. Aumiller, who's here
12 today and who will definitely be here on the 13th, and
13 also Dr. Christopher Klein, who submitted direct
14 testimony.

15 And I'm not sure the parties have
16 reached an agreement whether or not Dr. Klein needs to
17 be present to testify on the 13th. There seems to be
18 some issue. And that may, of course, depend on what
19 happens with the settlement agreement.

20 So I'm not sure what --

21 (Mr. Hartline disconnected.)

22 MR. ALEXANDER: We agreed that

23 Dr. Klein, due to his jury service, that he wouldn't
24 need to be in appearance at the last hearing, but if
25 the rate case goes forward, and there is no settlement

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1 agreement, we do request the opportunity to
2 cross-examine him on his testimony.

3 MS. CASHMAN-GRAMS: Okay. That's fine.

4 Well, I'll kind of just tell you how we usually go
5 about -- we typically will have like 10 minutes for
6 opening statements.

7 Is that going to be sufficient for each
8 side?

9 MR. BARONI: More than sufficient for
10 the state.

11 MR. ALEXANDER: I think that's fine.

12 MS. CASHMAN-GRAMS: Okay. And so
13 Navitas would start that, followed by the Consumer
14 Advocate.
15 So Mr. Hartline would be the first
16 witness. And, typically, we limit the summaries of the
17 direct testimony usually to about 10 minutes, unless
18 there's a need for additional time.
19 So will that be okay with everyone's
20 witnesses at 10 minutes summary time? And then we'd go
21 into cross-examination and redirect.
22 MR. BARONI: Yes.
23 MR. ALEXANDER: I just want a little
24 clarification on the definition of "summary."
25 Are we just summarizing what's in the

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1 record in the form of direct testimony or are the
2 witnesses permitted to go through that testimony
3 because there is quite a lot of testimony that's been
4 submitted.

5 There will be more than likely visuals,
6 exhibits, charts and graphs, to explain numbers and
7 figures. And I can only imagine that's going to take
8 more than 10 minutes.

9 MS. CASHMAN-GRAMS: How much time do
10 you think you would need?

11 MR. ALEXANDER: I would say we could --
12 20 to 30 minutes to go through the visuals and walk
13 through all the figures.

14 MS. CASHMAN-GRAMS: Okay. Let's kind
15 of target 20 minutes and see if we can keep around
16 there, if possible.

17 MR. ALEXANDER: Okay.

18 MS. CASHMAN-GRAMS: Since -- and
19 Mr. Hartline is your only witness; right?

20 MR. ALEXANDER: That's right.

21 MS. CASHMAN-GRAMS: Okay. Is 10
22 minutes still okay for each of your witnesses, just for
23 the summary?

24 MR. BARONI: Yes, Your Honor. I'm
25 assuming that the cross-examination of Mr. Hartline --

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1 would that take place before our witnesses?

2 MS. CASHMAN-GRAMS: Yeah. Yeah.

3 MR. BARONI: Okay.
4 MS. CASHMAN-GRAMS: It would be, you
5 know, Navitas would put on their proof first, and then
6 the Consumer Advocate. So we'd go through the whole --
7 -- but the whole process would be direct testimony, but
8 usually in a summary form narrative, and then
9 cross-examination.
10 You know, the directors can ask
11 questions at any time. We usually have allowance for
12 the staff to ask questions between cross and redirect.
13 And then, you know, all the witnesses will be subject
14 to recall for rebuttal purposes if needed.
15 We also have public comment that will
16 be interspersed, usually at the beginning, maybe also
17 one final at the end to see if anybody's -- if there's
18 someone here who wants to speak.
19 And since we are going to try to
20 hopefully move into deliberations -- usually, we do
21 either post-hearing briefs or closing arguments. So I
22 would think probably in this case we'd want closing
23 arguments.

24 Any preference for time on that?

25 MR. ALEXANDER: I would say 10 minutes,

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1 10 to 15 minutes is fine.

2 MR. BARONI: That's agreeable.

3 MS. CASHMAN-GRAMS: Okay.

4 MR. BARONI: I do have a question.

5 Will we know ahead of putting on the case whether or
6 not the amended settlement agreement has been --

7 MS. CASHMAN-GRAMS: Yes.

8 MR. BARONI: Okay.

9 MS. CASHMAN-GRAMS: Yes. They're going
10 to consider that first and deliberate on that. And so
11 you would know. And maybe there will be a few minutes
12 break, and then we'd start right into the hearing.

13 MR. BARONI: Okay.

14 MR. ALEXANDER: Okay.

15 MS. CASHMAN-GRAMS: If it was not
16 approved. I mean, if it's approved, then this is
17 really, you know, not going to be necessary, but at
18 least we'll be prepared so we could go right into it in
19 the event that it is.

20 MR. ALEXANDER: There's no chance we

21 can find out if it's rejected outright? Is there any
22 way to learn that information before the 13th?
23 MS. CASHMAN-GRAMS: You know, I
24 can't -- I don't know what the directors are going to
25 do. They're going to come, and they'll talk about it.

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1 So, yeah, there's no way for me to know.
2 MR. ALEXANDER: Okay. I just want to
3 be able to advise my client accordingly --
4 MS. CASHMAN-GRAMS: I understand.
5 MR. ALEXANDER: -- as to the
6 possibilities.
7 MR. BARONI: I have two other
8 questions. One, in the event that we do put on a case,
9 Mr. Alexander mentioned visuals and exhibits and charts
10 and so forth.
11 Do we need to make any kind of special
12 request to have access to a computer or to put on a
13 PowerPoint? Do we need to bring in a screen? I mean,
14 how does that work?
15 MS. CASHMAN-GRAMS: Well, we have the
16 screen that drops down.
17 MR. BARONI: Okay.
18 MS. CASHMAN-GRAMS: And, usually, our
19 IT department has, you know, computers, something they
20 can hook up. So I can make that request with Tracy.
21 MR. BARONI: And so we would just bring
22 a jump drive or a disk or -- okay.
23 MS. CASHMAN-GRAMS: Yeah, I believe.
24 I'll check with him and see what, if any, requirements
25 or if there's anything special you need to know about

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1 or just to bring a disk.
2 I would like the parties to exchange
3 those ahead of time, so that if there's any objections
4 or anything we know about it, we can work those out
5 before the hearing.
6 MR. BARONI: Okay.
7 MR. ALEXANDER: And just for the sake
8 of the old way of doing things, do you have an easel if
9 we bring in literally a poster board?
10 MS. CASHMAN-GRAMS: Yeah, we've got
11 that.

12 MR. ALEXANDER: We can use that.
13 And just from the standpoint of
14 presentation, because of the room layout, if
15 Mr. Hartline wanted to present that information from
16 that easel, is he allowed to walk around or does he
17 need to be seated to do that?
18 MS. CASHMAN-GRAMS: Typically, the
19 witness is seated in the box. You could ask for
20 permission for him to leave and, you know --
21 MR. ALEXANDER: Okay.
22 MS. CASHMAN-GRAMS: -- present in the
23 center here.
24 MR. ALEXANDER: I think it would be in
25 everybody's benefit to do it that way just so we're not

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1 pointing and trying to --
2 MS. CASHMAN-GRAMS: Yeah. And, you
3 know, I'm sure that likely that would be okay, but
4 that's something just to say at the time.
5 MR. ALEXANDER: Sure. Okay.
6 MS. CASHMAN-GRAMS: We've had that
7 happen in the past, where they've come out in the
8 center and kind of gone over some things.
9 MR. ALEXANDER: Great.
10 MR. BARONI: A similar question. If
11 you're cross-examining the witness, and you have
12 exhibits, does the agency allow us to get up and walk
13 around? How do we introduce --
14 MS. CASHMAN-GRAMS: Same, just like --
15 MR. BARONI: -- exhibits, just --
16 MS. CASHMAN-GRAMS: Yeah, you just have
17 enough copies for all the directors and a few extra for
18 staff as well.
19 What kind of count are we looking at
20 for that? Usually, about 15 -- 10, 12. I'd say 12
21 probably would be sufficient, 12 copies of whatever you
22 want to hand out to the directors and staff to follow
23 along.
24 MR. BARONI: And should we assume that
25 even though documents are in the record, that if we're
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1 going to use them, we should have sufficient copies?
2 MS. CASHMAN-GRAMS: Yes.

3 MR. BARONI: Okay.

4 MS. CASHMAN-GRAMS: Also one for the
5 court reporter. And, typically, just either have, you
6 know, someone to pass them out after exchanging it with
7 other counsel, make sure they are aware of what you're
8 handing out. And then if you need to approach the
9 witness, just again ask the panel. It would be the --
10 the chairperson would be the one running the hearing.

11 MR. BARONI: Okay.

12 MR. ALEXANDER: So this will be the
13 last time we convene before the 13th; is that correct?

14 MS. CASHMAN-GRAMS: Correct.

15 MR. ALEXANDER: Okay.

16 MS. CASHMAN-GRAMS: Let's look at a
17 date for the rebuttal testimony that you want to put
18 in.

19 MR. ALEXANDER: Okay. Today is the
20 15th. Martin Luther King Day is Monday next week. So
21 I would say a week from now, Tuesday, the 22nd.

22 MR. BARONI: That's fine with us.

23 MS. CASHMAN-GRAMS: Okay. That will
24 work.

25 MR. BARONI: The Consumer Advocate, as
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1 part of the amendment to the settlement agreement, sent
2 in a list, errata, to Ms. Aumiller's testimony.
3 Other than that, unless the Court would
4 like a redline of her existing testimony, the state
5 does not plan on submitting any other documents.

6 MS. CASHMAN-GRAMS: Okay.

7 MR. BARONI: But it's really up to you.

8 MS. CASHMAN-GRAMS: So --

9 MR. BARONI: So in the amendment we
10 list -- we just made some changes to numbers in the
11 existing direct testimony.

12 MS. CASHMAN-GRAMS: Okay, but it was in
13 the direct testimony and not only for the settlement?

14 MS. AUMILLER: Correct.

15 MR. BARONI: This would apply to the
16 direct testimony.

17 MS. CASHMAN-GRAMS: Okay. Yeah, I
18 mean, rebuttal would be limited to that, to the changes
19 of the direct testimony.

20 MR. BARONI: And, again, the Consumer

21 Advocate is happy to submit a redline version of that
22 testimony if it will be helpful either to the Court or
23 to Navitas.

24 MR. ALEXANDER: That would be helpful.

25 We would certainly like any clarification on that. I

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1 think the rebuttal -- the additional testimony that's
2 submitted, though, can be construed very broadly, even
3 though we understand the limitation on rebuttal
4 testimony.

5 MS. CASHMAN-GRAMS: Okay. So that's

6 fine, if you want to do that.

7 MR. BARONI: May I ask one more

8 question? I guess the only other exhibits, other than
9 those that have been filed, would be -- would we have
10 an exchange date for those?

11 I mean, will you have extra exhibits,
12 other than the trial exhibits that we discussed for the
13 opening and whatnot? Do we want to pick a date to
14 exchange those?

15 MR. ALEXANDER: I think we should pick

16 a date. I don't know exactly what the exhibits are
17 going to show. Obviously, we have to work within the
18 confines of the 20 to 30 minutes in presentation and
19 summarization. So it's mostly going to be trying to
20 simplify this case as much as possible within the
21 timeframe given.

22 MR. BARONI: Okay.

23 MR. ALEXANDER: The visuals, I think,

24 will be helpful in doing that.

25 MS. CASHMAN-GRAMS: Well, I guess other

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1 than the exhibits, which are not -- you haven't seen
2 yet, are there any other evidentiary objections that
3 you think may come up? I mean, do we need motions in
4 limine for anything?

5 MR. BARONI: The only possible

6 objection that may come up, and it depends on what
7 happens with the settlement, is testimony or documents
8 that may have been exchanged during settlement
9 discussions that are not on the record.

10 MS. CASHMAN-GRAMS: If those were

11 attempted to be introduced?

12 MR. BARONI: Yes. And we're happy to
13 file a motion in limine or ask for -- but I'm not sure
14 that we can anticipate --
15 MR. ALEXANDER: The hearing on that.
16 MR. BARONI: Yeah, how that may happen.
17 MS. CASHMAN-GRAMS: Yeah, that's fine.
18 I mean, that -- I would think, because we're aware that
19 those are going to be not part of your case in chief,
20 that that was something separate having to do with the
21 settlement, that would not be introduced.
22 In the event something like that were
23 to happen, that would be taken up right then with the
24 chairman.
25 MR. BARONI: So there's no need to file

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1 a motion in limine?
2 MS. CASHMAN-GRAMS: Not for a situation
3 like that. If there's something already in direct
4 testimony that's part of the case in chief that you
5 think is objectionable, then that's what I would take
6 care of.
7 MR. BARONI: Okay.
8 MS. CASHMAN-GRAMS: So you don't know
9 of anything right now, is that -- I'm kind of getting
10 the feeling you guys aren't aware of anything you would
11 bring right now?
12 MR. ALEXANDER: Well, there were some
13 documents exchanged between September and December to
14 reach the settlement agreement that aren't in the
15 record.
16 MS. CASHMAN-GRAMS: That aren't in the
17 record.
18 MR. ALEXANDER: So the parties need to
19 go back and look at what's in the record and what was
20 exchanged by e-mail.
21 MS. CASHMAN-GRAMS: Okay. Well,
22 let's --
23 MR. BARONI: I think that we could
24 narrow that to a date range because the parties did not
25 enter into any settlement discussions until after

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1 Ms. Aumiller filed her direct testimony on or about
2 November 21st of 2012.

3 And so it would be after that up until
4 I guess the time we filed the amendment to the
5 settlement agreement that could pose some challenges if
6 we have to move to a full trial -- hearing.
7 Does that make sense?
8 MR. ALEXANDER: Yeah, but the window of
9 settlement I think goes back to the hearing on
10 September 11th, at least to the order on
11 September 11th, because Thomas was working with you-all
12 directly and with authority of counsel to send you
13 charts and so forth throughout the fall. So we would
14 construe that as part of it, also.
15 MR. BARONI: That's fine.
16 MR. ALEXANDER: The negotiation.
17 One other -- we do have a motion to
18 admit counsel from Oklahoma pro hac vice. It is
19 possible that Mr. Ron Comingdeer might participate in
20 the hearing, as well, as counsel.
21 MS. CASHMAN-GRAMS: Yeah, that's fine.
22 Those have been approved in the record.
23 MR. ALEXANDER: Great.
24 MS. CASHMAN-GRAMS: Let's set some
25 dates for these real quick just for the motions in

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1 limine and for the exchange of the exhibits.
2 Based on the 13th, I think, depending
3 on how many, if I could get the -- if I could get the
4 motions by February 5th. So I don't know if you -- I
5 guess you'd need to exchange your exhibits prior to
6 that, so you can include those if there's a problem
7 that you can't work out.
8 MR. BARONI: Right.
9 MS. CASHMAN-GRAMS: What's the
10 preference of the parties on that because we're not
11 going to get those. Those are between the two of you.
12 I guess I don't need to even -- I don't have to set
13 that. You guys can work that out. But then the
14 motions, if you have any, would be -- I'd like to see
15 them the 5th.
16 MR. ALEXANDER: Okay.
17 MS. CASHMAN-GRAMS: So I could have
18 time to rule on them. You know, just to kind of make a
19 ponit, we're wanting to move forward on the 13th
20 through the hearing and the deliberations due to the

21 statutory deadline.

22 You know, the company certainly can
23 waive that deadline if they so choose. And if the
24 company were to do that, we could move this to the
25 March conference. You know, that might save some time

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1 and money preparing for a hearing that may not happen,
2 but that's going to be up to the company.

3 MR. ALEXANDER: So let me make sure I
4 understand it correctly. The most important thing is
5 to go forward with the hearing on the settlement
6 agreement itself as early as possible.

7 Could we bifurcate that from the
8 proceeding itself if the company is willing to waive --

9 MS. CASHMAN-GRAMS: Yeah. In that
10 case, we would still have the settlement conference --
11 settlement -- consideration of the settlement on the
12 13th. And we could still do that at 10:00, I believe.
13 And then move -- depending on what

14 happens there, if a hearing is needed, we could move
15 that to the March conference. And I could see if we
16 could get that, you know, in the morning again, or if
17 they would prefer just to have it along with the
18 conference, but I'd have to check. I don't know.

19 MR. ALEXANDER: Sure. Okay. Well,
20 that's very good to know.

21 MR. BARONI: Do we know when the March
22 conference is yet?

23 MS. CASHMAN-GRAMS: We have a tentative
24 date. These things -- you know, they sometimes change.
25 So be aware of that. But right now it's on the 11th of

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1 March.

2 MR. ALEXANDER: I'd like to introduce a
3 scenario. If we come in for the 13th for the hearing
4 as planned at 10:00 A.M., the settlement agreement is
5 approved, but with some modifications, and the parties
6 then take a moment to discuss it, and they come back
7 in, and basically one of them or both of them objects
8 to the modification, and they can't accept the
9 correction and decide to proceed, at that point could
10 Navitas waive the proceeding until March 13th
11 potentially?

12 MS. CASHMAN-GRAMS: You could, but at
13 that point everybody would be prepared to move forward.
14 You know, you would have already exchanged exhibits.
15 The deadline for the motion in limine had gone passed.
16 You know, I think it would be more helpful to do it on
17 the front end if you're going to do it so that it would
18 save time and money not only for the company, but for
19 all parties.

20 MR. ALEXANDER: Sure.

21 MS. CASHMAN-GRAMS: And, you know, we
22 understand the deadline, and so we're trying to make --
23 you know, to accommodate that as much as possible.
24 That's why we want to push through.
25 I mean, technically, you could. I

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1 don't know. The directors may be prepared because
2 they're going to have been prepared up front for the
3 witness testimony and how things are going to proceed.
4 And so they may want to just go ahead with it.

5 MR. ALEXANDER: Sure. And that's
6 exactly what the settlement agreement says. It says
7 that the parties have the right to make a joint request
8 at that point. And the directors can either accept
9 that motion or deny it.

10 MS. CASHMAN-GRAMS: Yeah, I mean, you
11 can make the motion. Certainly.

12 MR. BARONI: When would you need to
13 have that motion, or the waiver, I guess? What's
14 the --

15 MS. CASHMAN-GRAMS: Yeah. I think we
16 would want to do that -- we would want to know before
17 we begin all the preparations for a hearing, you know.
18 Otherwise, it -- I mean, once you've gone through it
19 all, it doesn't make a whole lot of sense to then
20 postpone it if the directors are prepared, and
21 everybody has been noticed.

22 MR. BARONI: Right.

23 MS. CASHMAN-GRAMS: So our first
24 deadline isn't until --

25 MR. BARONI: If Navitas does agree to

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1 bifurcate the proceeding like that, are they still
2 required to provide notice to their customers for the

3 February 13th continuation of the settlement
4 conference?

5 MS. CASHMAN-GRAMS: Well, again, it
6 was -- we're reconvening. I think the publication
7 notice still needs to go forward because it's -- we're
8 reconvening the hearing. It's going to start with the
9 settlement conference, but if the -- now, if it's
10 waived ahead of time, you know, before the notice is
11 issued -- well, no, I think we still need to have it
12 because it's a hearing.

13 So, yeah, we'd still need to have it,
14 even though we'd just be considering the settlement.
15 Because we still notice those anyway.

16 MR. BARONI: Right. Makes sense.

17 MS. CASHMAN-GRAMS: Yeah. But I
18 understand what you're saying. Yeah, I can see -- but,
19 you know, I think, yeah, we'd still need to have it.

20 MR. ALEXANDER: And when you say, "We
21 need to have it," we need to have an amended notice if
22 we --

23 MS. CASHMAN-GRAMS: That shows the
24 date. You know, that the hearing will be reconvened.
25 It was deferred from the initial date, and it's being

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1 reconvened on the 13th.

2 MR. ALEXANDER: We're already doing
3 that notice, but if we agree on a waiver to March 11th
4 of the rate proceeding, do we need to issue another
5 notice to the public before the 13th advising them of
6 that?

7 MS. CASHMAN-GRAMS: You mean a third
8 notice?

9 MR. ALEXANDER: Yeah.

10 MS. CASHMAN-GRAMS: Let me get back
11 with you on that.

12 MR. ALEXANDER: They may come in and
13 say, "I thought we were having a rate proceeding today,
14 and now we just found out it's been postponed to
15 March 11th."

16 MS. CASHMAN-GRAMS: Well, I mean -- but
17 technically, they had gotten notice, so they could have
18 appeared. It's kind of -- it's more -- let me get back
19 with you. Let me confirm -- I don't believe that we've
20 done that in other rate cases, the ones that come to

21 mind where we started in one location and took it up
22 later in another location.
23 I'd have to check. I don't recall them
24 reissuing a notice. So I will get back with you --
25 MR. ALEXANDER: Okay.

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1 MS. CASHMAN-GRAMS: -- with a firm
2 answer on that.
3 MR. ALEXANDER: And I guess that begs
4 the -- the white elephant in the room, right, is if
5 five members of the public show up on the 13th of
6 February, and we go forward with the rate case at 10:00
7 A.M., how does that play out procedurally in terms of
8 what we just organized here between the parties?
9 MS. CASHMAN-GRAMS: Yeah, they're
10 still -- they'll be allowed opportunity to provide
11 public comment. Like I said, a lot of times we do it
12 at the beginning of the hearing and then final call at
13 the end to see if anybody new has arrived, or anybody
14 has something to say. So that wouldn't change.
15 Whether it's just with settlement or
16 whether we go forward with a hearing on the merits,
17 they're still given opportunity to speak because it is
18 a hearing.
19 MR. ALEXANDER: Okay.
20 MS. CASHMAN-GRAMS: And then, you know,
21 if it were to be moved again to March, and they showed
22 up again, they would be given opportunity. There would
23 another -- it's the continuation.
24 MR. ALEXANDER: Sure.
25 MR. BARONI: Thank you.

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1 MR. ALEXANDER: I think that's all I
2 have.
3 MR. BARONI: We don't have anything
4 else either.
5 MS. CASHMAN-GRAMS: Okay. Make sure I
6 got everything. On the closing argument, I think in
7 the past we've done kind of a -- where the Consumer
8 Advocate would go first on that, and then Navitas would
9 have the last word.
10 Is that how you want to proceed?
11 MR. ALEXANDER: That's probably not the

12 way I would want to proceed. I would rather have the
13 opportunity for --
14 MS. CASHMAN-GRAMS: A rebuttal
15 argument.
16 MR. ALEXANDER: -- a rebuttal.
17 MS. CASHMAN-GRAMS: Okay. Let's do
18 that. I think we've done it both ways. So . . .
19 Okay. I don't believe I have anything
20 else. So if there's nothing else from the parties,
21 we'll go ahead and adjourn.
22 MR. ALEXANDER: Thank you. And we
23 appreciate all of your efforts to make this work. And,
24 hopefully, we can get it resolved to everyone's benefit
25 efficiently.

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1 MS. CASHMAN-GRAMS: Thank you. And I
2 do appreciate the cooperation of the parties too.
3 MR. BARONI: Thank you.

4

5 (Proceedings concluded at 10:40 A.M.)

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1 REPORTER'S CERTIFICATE

2 I, Patricia A. Jennings, Licensed Court

3 Reporter, Registered Professional Reporter, and Notary
4 Public for the State of Tennessee, hereby certify that
5 I reported the foregoing proceedings at the time and
6 place set forth in the caption thereof; that the
7 proceedings were stenographically reported by me; and
8 that the foregoing proceedings constitute a true and
9 correct transcript of said proceedings to the best of
10 my ability.

11 I FURTHER CERTIFY that I am not related to
12 any of the parties named herein, nor their counsel, and
13 have no interest, financial or otherwise, in the
14 outcome or events of this action.

15 IN WITNESS WHEREOF, I have hereunto affixed
16 my official signature and seal of office this 22nd day
17 of January, 2013.

18

19

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21

22

PATRICIA A. JENNINGS, LCR, RPR

23 NOTARY PUBLIC, STATE OF TENNESSEE

24 LCR No. 200, Expires 6/30/2014

25 Notary Commission Expires 5/20/2014

Patricia A. Jennings, LCR, RPR