

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 8, 2015

IN RE:

**APPLICATION OF B&W PIPELINE, LLC FOR A
CERTIFICATE OF CONVENIENCE AND NECESSITY
TO OPERATE A NATURAL GAS PIPELINE SYSTEM
IN PICKETT, MORGAN AND FENTRESS COUNTIES**

**DOCKET NO.
13-00151**

**ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

This matter came before Chairman Herbert H. Hilliard, Director Kenneth C. Hill and Director James M. Allison of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on November 4, 2014, to hear and consider the *Application of B&W Pipeline, LLC for a Certificate of Convenience and Necessity* (“*Application*”) filed by B&W Pipeline, LLC (“B&W”) on December 9, 2013.

BACKGROUND AND TRAVEL OF THE CASE

B&W is a Delaware limited liability company authorized to conduct business in Tennessee and is a wholly owned subsidiary of FIR Energy, LLC.¹ B&W owns a natural gas pipeline that extends for approximately fifty miles through parts of Pickett, Morgan and Fentress counties in Tennessee. The pipeline was previously owned by The Titan Energy Group, Inc, a subsidiary of Gasco Distribution Systems, Inc. (“Gasco”), which held a Certificate of Public Convenience and Necessity (“CCN”) from the TRA. Following the bankruptcy of Gasco, the pipeline was separated

¹ FIR Energy is owned and controlled by MI Energy, LLC. See Response to TRA Data Request #2, Response #8 (July 3, 2014).

from Gasco and sold to B&W.²

B&W filed the *Application* for a CCN, pursuant to Tenn. Code Ann. § 65-4-201, on December 9, 2013. The Company filed additional financial information on February 25, 2014, and responses to TRA Staff data requests on March 5, 2014, July 3, 2014, October 8, 2014, October 17, 2014 and October 22, 2014. B&W also submitted pre-filed testimony by Mr. Rafael E. Ramon on August 28, 2014, which was later substituted by Mr. Ramon's pre-filed testimony filed on October 10, 2014.

At the regularly scheduled Authority Conference held on February 3, 2014, the voting panel assigned to this docket voted unanimously to convene a contested case and appoint a Hearing Officer to prepare the case for a hearing.³ On February 28, 2014, the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") filed a *Petition to Intervene*, which was granted by the Hearing Officer on March 7, 2014. Prior to the Hearing on this matter, the Consumer Advocate filed a letter in the docket stating that it did not intend to oppose the CCN.⁴

The Hearing in this matter was held before the voting panel on November 4, 2014, as duly noticed by the Hearing Officer on October 24, 2014. Appearing for the Company were Mr. Henry Walker, Esq., and Mr. Rafael E. Ramon, Controller for Enrema, LLC. Ms. Rachel Newton, Esq. appeared for the Consumer Advocate. At the Hearing, Mr. Ramon ratified and summarized his pre-filed testimony and was subject to questioning before the panel. No person sought to comment during the Hearing.

² Rafael E. Ramon, Pre-filed Direct Testimony, pp. 2-3 (October 10, 2014). The pipeline system was originally sold by Titan Energy Group to Highland Rim Energy on June 11, 2010. Highland Rim Energy assigned its rights under the purchase agreement with Titan Energy Group to B&W on September 2, 2010. The natural gas distribution system owned by Gasco is now owned by Navitas TN NG LLC. See Response to TRA Data Request #2, Response #8 (July 3, 2014).

³ *Order Convening a Contested Case and Appointing a Hearing Officer* (February 6, 2014).

⁴ See Letter from Rachel Newton to Herbert H. Hilliard, p. 1 (October 31, 2014).

FINDINGS AND CONCLUSIONS

Tenn. Code Ann. § 65-4-201 requires a public utility to obtain a CCN from the Authority.

Specifically, Tenn. Code Ann. § 65-4-201(a) states:

No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate; provided, however, that this section shall not be construed to require any public utility to obtain a certificate for an extension in or about a municipality or territory where it shall theretofore have lawfully commenced operations, or for an extension into territory, whether within or without a municipality, contiguous to its route, plant, line, or system, and not theretofore receiving service of a like character from another public utility, or for substitute or additional facilities in or to territory already served by it.⁵

In considering B&W's *Application*, the panel evaluated whether the Company possesses sufficient managerial, financial and technical abilities to provide the applied-for services and whether there is a public need for those services. In addition, the panel considered whether B&W is willing to adhere to the Authority's policies, rules and orders, including those rules related to gas pipeline safety.

At the conclusion of the Hearing, upon consideration of the evidence presented, the panel voted unanimously to grant the *Application*, based on the following findings:

1. B&W Pipeline, LLC is a Delaware limited liability company authorized to conduct business in Tennessee. The address of B&W's corporate office is 728 South Jefferson Avenue, Unit 4, Cookeville, Tennessee 38501.
2. B&W owns a natural gas pipeline that extends for approximately fifty miles through parts of Pickett, Morgan and Fentress counties in Tennessee.

⁵ Tenn. Code Ann. § 65-4-201(a).

3. There is a public need for the natural gas pipeline, because B&W provides natural gas transportation service to Navitas TN NG LLC, which in turn uses the gas to meet its customers' needs.

4. B&W has the requisite technical and managerial expertise to operate the pipeline through its agreement with its affiliate, Enrema, LLC.

5. B&W has the requisite financial ability to operate the pipeline through its parent company, FIR Energy, LLC, and financial expertise through the financial management services of its affiliate, Enrema, LLC.

6. B&W has not completed its transition to the Uniform System of Accounts, as required by TRA Rule 1220-4-1-.11 for public utilities.

7. B&W provides transportation service to Navitas TN NG LLC pursuant to a special contract, instead of a tariff.⁶

8. B&W has represented that it will comply with the Authority's policies, rules and orders, including those related to natural gas pipeline safety.

IT IS THEREFORE ORDERED THAT:

1. The *Application of B&W Pipeline, LLC for a Certificate of Convenience and Necessity* filed by B&W Pipeline, LLC is granted.

2. B&W Pipeline, LLC is directed to use the Uniform System of Accounts as required by Tenn. Code Ann. § 65-4-111 and TRA Rule 1220-4-1-.11.

3. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen days from the date of this Order.

⁶ B&W provides natural gas distribution service to eight customers pursuant to easement agreements. The Company had originally indicated its intent to transfer these customers to Navitas TN NG LLC, but informed the Authority on October 22, 2014, that it would keep serving these customers pursuant to the easements. The panel declined to make a finding as to whether or not service to these eight customers through these agreements requires the Company to obtain a certificate as a local natural gas distribution company.

4. Any party aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

Chairman Herbert H. Hilliard, Director Kenneth C. Hill and Director James M. Allison concur.

ATTEST:


Earl R. Taylor, Executive Director