

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

IN RE:)	
PETITION OF B&W PIPELINE, LLC)	DOCKET NO. 15-00042
FOR AN INCREASE IN RATES)	

POST-HEARING BRIEF OF B&W PIPELINE, LLC

Background

B&W Pipeline, LLC (“B&W”) is a state-certificated,¹ natural gas pipeline, approximately fifty-three miles in length, located entirely in Tennessee. A map of the pipeline is attached. The southern end of the B&W pipeline receives gas from an interstate transmission line owned by Spectra Energy Corp. Gas from local wells enters the B&W line at each of the three compressor stations shown on the map and is co-mingled with gas from Spectra.

Along the route of the pipeline, gas is delivered to approximately thirty customers served by Navitas, a local gas distribution company. Each customer is served by a separate service line and meter. In addition, there are eight landowners who receive free gas in exchange for pipeline easements. These are also metered. Approximately two miles from the northern end of the pipeline, gas is delivered to Navitas through the “Byrdstown Master Meter” to serve Navitas customers located in and around Byrdstown, Tennessee. At the northern end of the pipeline, just south of the Tennessee-Kentucky border, gas is delivered to Navitas at the “Albany Master Meter” to serve Navitas customers located in and around Albany, Kentucky.²

¹ See TRA Docket 13-00151.

² It is B&W’s understanding that there are six Navitas customers receiving gas delivered through the Albany Meter who are physically located in Tennessee. Five are residential customers and one is a commercial operation. B&W has no direct knowledge of the amount of gas consumed by these users.

B&W also transports gas for Rugby Energy, LLC (“Rugby”), an affiliate of B&W, which uses gas for oil extraction at wells located in the area. All gas transported for Rugby leaves the pipeline at a meter located three miles north of the “Shale Gas Compressor” and is consumed in Tennessee.

Analysis

The Authority asks the parties to the above-captioned proceeding to file briefs on the Authority’s jurisdiction to establish transportation rates for B&W.

Pursuant to 15 U.S.C. § 717(c), the Federal Energy Regulating Commission (“FERC”) does not regulate the transportation of gas in interstate commerce if such gas is “received” and “ultimately consumed” in the same state and if the transportation is regulated by a state commission.³ All gas transported by B&W except the gas delivered to the Albany Master Meter is both “received” and “ultimately consumed” in Tennessee.⁴ Therefore, based on the language of the Hinshaw Amendment and discussions with Mr. Jack Kendall, senior attorney in the Office of the General Counsel at the FERC, the TRA may establish a transportation rate for gas carried on

³ 15 U.S.C. § 717(c), commonly referred to as the Hinshaw Amendment, states:

The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to Federal Power Commission (the Federal Power Commission is the precursor agency to FERC).

⁴ As shown on the attached chart, approximately 76% of the gas carried by Navitas during the last twelve months is consumed in Kentucky and 25% is consumed in Tennessee. The chart does not include usage by the six Tennessee customers described in footnote 2.

the pipeline that is consumed in Tennessee *i.e.*, all gas except that which passes through the Albany meter.

In an analogous situation, the Tennessee Supreme Court held that, in the absence of federal preemption, the Tennessee Public Service Commission “beyond question” had jurisdiction to regulate sales of natural gas by a pipeline located wholly within Tennessee even though the gas was purchased from an interstate pipeline and considered part of “interstate commerce.” The Court explained that both state law and the federal Natural Gas Act “contemplate a complete system of dual regulation of the natural gas industry” and that, since the transaction was not regulated by the Federal Power Commission, the state commission could exercise jurisdiction “if it chose to do so.” Tennessee Public Service Commission v. Nashville Gas Company, 551 S.W.2d 315, 320-321 (1977). Similarly, if the TRA “chose to do so” in this case, the FERC would, according to Mr. Kendall, treat B&W as a Hinshaw pipeline in regard to the transportation of gas that is consumed in Tennessee and issue the pipeline a “blanket certificate” under 18 C.F.R. § 284.224 for the transportation of gas that is consumed in Kentucky.⁵

Finally, although the TRA cannot set a transportation rate for gas consumed by end users in Kentucky, the rate set by the TRA in this docket for gas consumed in Tennessee could, if consistent with the rules of the FERC, also be applied to the transportation of gas measured at the Albany meter and consumed in Kentucky. *See* 18 C.F.R. § 284.224(c)(7) and (e)(2).

⁵ Both B&W and Navitas require authority from the Federal Energy Regulatory Commission (“FERC”) to transport gas from Tennessee to Kentucky. B&W needs to obtain a “blanket certificate” from FERC pursuant to 18 C.F.R. § 284.224. Navitas needs to seek designation under Section 7(f) of the Natural Gas Act to operate as a local distribution company carrying gas from Tennessee to serve customers in Albany, Kentucky. At this time, neither company has such authority, but that has no bearing on the jurisdiction of the TRA to establish rates for the transportation of gas that is received and consumed in Tennessee.

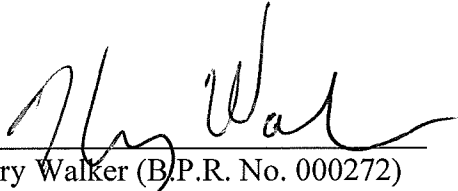
Conclusion

In the absence of federal preemption, there is no legal barrier preventing the TRA from exercising its jurisdiction over the transportation of natural gas by a pipeline located wholly within the state. Therefore, the TRA may exercise jurisdiction over B&W and may set a transportation rate for gas that is received and consumed in Tennessee.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

By: _____

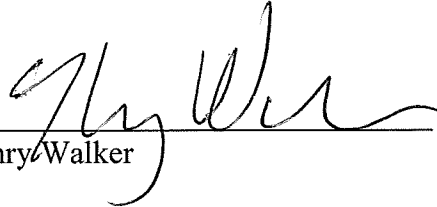

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CERTIFICATE OF SERVICE

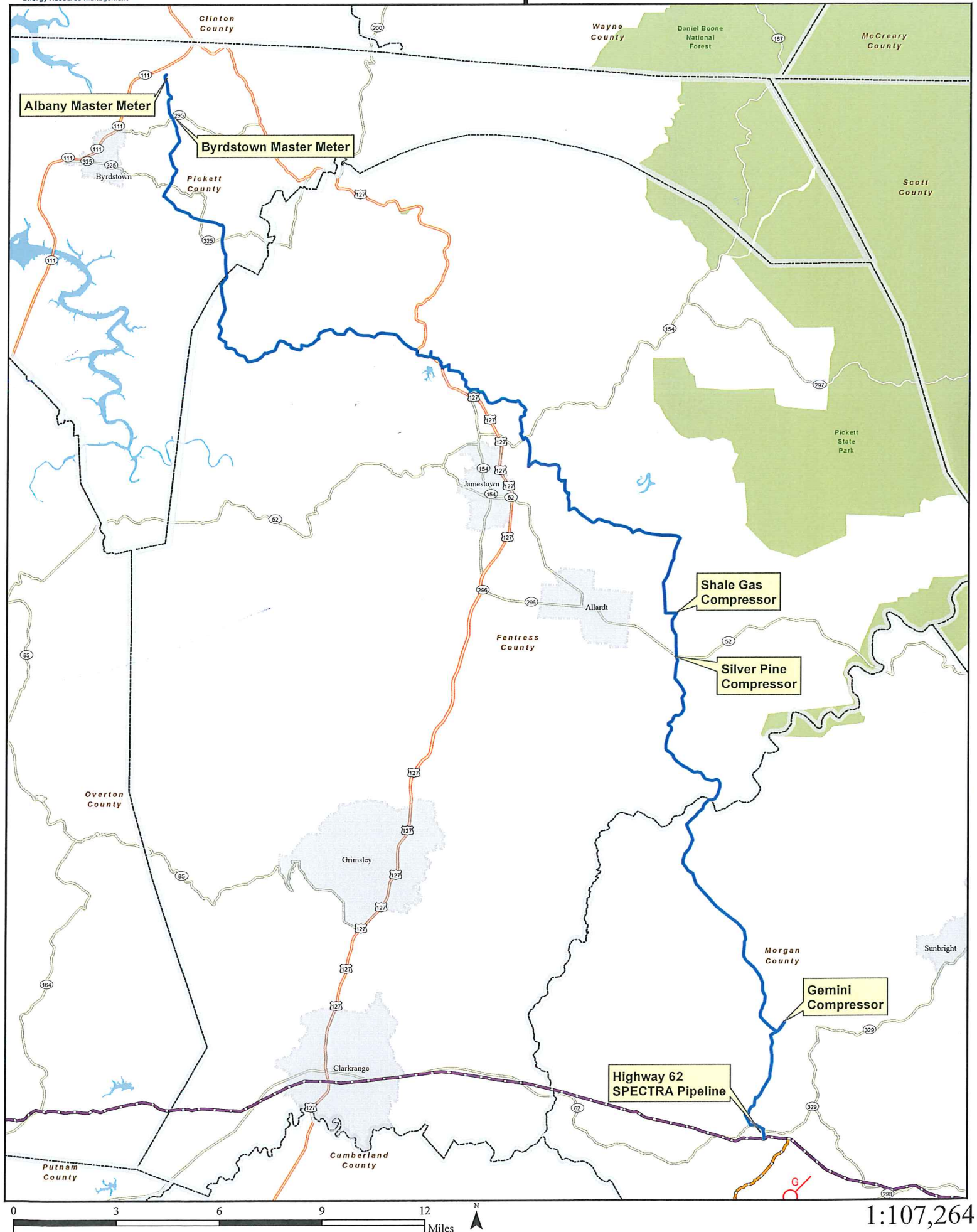
I hereby certify that on the 9th day of October, 2015, a copy of the foregoing document was served on the parties of record, via electronic delivery and U.S. Mail, postage prepaid, addressed as follows:

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B&W Pipeline





LINE USAGE BREAKDOWN

	Sep-14	Oct-14	Nov-14	Dec-14	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Total 2015
Total Gas Transported By B&W Pipeline:	1,504 MCF	2,594 MCF	4,689 MCF	7,564 MCF	15,733 MCF	14,401 MCF	21,383 MCF	10,593 MCF	12,328 MCF	10,050 MCF	5,864 MCF	6,508 MCF	113,612 MCF
LINE USAGE BREAKDOWN 2015													
Total Gas Delivered at Byrdstown MM (TN)	132 MCF	203 MCF	755 MCF	1,174 MCF	1,659 MCF	1,981 MCF	1,210 MCF	313 MCF	327 MCF	300 MCF	207 MCF	172 MCF	8,443 MCF
Total Gas Used By Affiliate (TN)	0 MCF	0 MCF	0 MCF	917 MCF	3,100 MCF	2,800 MCF	3,100 MCF	2,764 MCF	2,000 MCF	1,148 MCF	0 MCF	121 MCF	15,950 MCF
Nantitas Directly Connected Customers (TN)	474 MCF	58 MCF	165 MCF	341 MCF	477 MCF	450 MCF	353 MCF	74 MCF	40 MCF	364 MCF	19 MCF	122 MCF	2,933 MCF
B&W Easement Free Consumers (TN)	59 MCF	199 MCF	176 MCF	284 MCF	288 MCF	314 MCF	217 MCF	92 MCF	68 MCF	26 MCF	31 MCF	31 MCF	1,784 MCF
Total TN Usage	665 MCF	459 MCF	1,096 MCF	2,716 MCF	5,534 MCF	5,545 MCF	4,880 MCF	3,243 MCF	2,435 MCF	1,838 MCF	257 MCF	446 MCF	29,116 MCF
Total Gas Delivered at Albany MM (KY)	1,239 MCF	2,135 MCF	3,593 MCF	4,848 MCF	10,199 MCF	8,856 MCF	16,503 MCF	7,350 MCF	9,893 MCF	8,212 MCF	5,607 MCF	6,062 MCF	84,496.80
Total KY Usage	1,239 MCF	2,135 MCF	3,593 MCF	4,848 MCF	10,199 MCF	8,856 MCF	16,503 MCF	7,350 MCF	9,893 MCF	8,212 MCF	5,607 MCF	6,062 MCF	84,496.80
ANNUAL AVERAGE													
% Consumed in TN:	34.94%	17.71%	23.38%	35.91%	35.18%	38.50%	22.82%	30.62%	19.75%	18.29%	4.39%	6.85%	24.03%
% Consumed in KY:	65.06%	82.29%	76.62%	64.09%	64.82%	61.50%	77.18%	69.38%	80.25%	81.71%	95.61%	93.15%	75.97%