

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 16, 2016

IN RE:

PETITION OF B&W PIPELINE, LLC
FOR AN INCREASE IN RATES

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DOCKET NO.
15-00042

ORDER GRANTING, IN PART, AND DENYING, IN PART,
THE PETITION FOR RECONSIDERATION

This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones and Director Robin L. Morrison of the Tennessee Regulatory Authority (the “Authority”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on April 15, 2016, for consideration of the *Petition for Reconsideration* filed by B&W Pipeline, LLC (“B&W” or the “Company”) on March 28, 2016.

BACKGROUND AND THE *PETITION FOR RECONSIDERATION*

On April 2, 2015, B&W filed the *Petition of B&W Pipeline, LLC for an Increase in Rates*. In sum, the Company sought to increase rates from \$0.60 per Mcf to \$3.69 per Mcf.¹ The Consumer Advocate and Protection Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) and Navitas TN NG, LLC (“Navitas”) intervened and participated fully in the proceedings. On September 14, 2015, the panel held a hearing on the merits on B&W’s proposed rate increase.

On December 14, 2015, the panel deliberated the merits of B&W’s proposed rate increase and established fixed and volumetric rates in order to permit recovery of a revenue

¹ *Corrected Company Exhibits*, Schedule 1 (May 22, 2015).

deficiency of \$144,118.² Following the decision of the hearing panel, but before the final order was issued, the Company filed a *Petition for Clarification*, which sought to adjust rates annually to recover a fixed revenue requirement. The panel denied the *Petition for Clarification* on March 14, 2016.³ Following the issuance of the *Final Order Setting Rates* on March 10, 2016, the Company timely filed the *Petition for Reconsideration* on March 28, 2016.⁴

In its *Petition for Reconsideration*, B&W seeks reconsideration of four issues: First, B&W asserts that the Authority should reconsider its decision to include in rate base the price that B&W paid for Gasco's assets or a "reasonable" allocation of the purchase price between the pipeline and the wells.⁵ B&W submits that the former president of Gasco, Fred Steele, has indicated to the Company that the 2008 Gasco tax return reflects depreciation for tax purposes over seven years.⁶ B&W further relies upon information from Mr. Steele that the Titan Energy Group, Inc. ("Titan") recorded the pipeline sale on its books as \$1,212,892.80. Thus, B&W submits that the Authority's reliance upon the 2008 Gasco tax return should be reconsidered.

The Company now proposes valuing the system, for the purposes of rate base calculations, within the range of \$1.6 million and \$1.2 million.⁷ B&W further asserts that the pipeline was not devoted to public use until B&W purchased it in 2010; thus, any determination of "original costs" must be based upon the Company's purchase price of the pipeline.

Second, B&W asserts that the Authority omitted \$225,585.31 in acquisition expenses from the Company's rate base, which was not challenged by the intervening parties.⁸

Third, B&W seeks reconsideration of the Authority's throughput determinations. The Company asserts that the throughput projections proposed by all parties have proven unrealistic

² *Final Order Setting Rates*, p. 20 (March 10, 2016).

³ *Order Denying the Petition for Clarification*, pp. 3-4 (April 7, 2016).

⁴ The Authority was closed on March 25, 2016, in observance of a state holiday.

⁵ *Petition for Reconsideration*, pp. 2-6 (March 28, 2016).

⁶ *Id.*, attached to B&W's *Petition for Reconsideration* is an "affidavit" from Fred A. Steele, which is not notarized.

⁷ *Id.* at 6.

⁸ *Id.* at 4.

based on the throughput data for the first quarter of 2016.⁹ Thus, the Company requests that the Authority revise the throughput closer to the 2015 throughput numbers and adjust the volumetric rates accordingly.

Finally, just as it did in its *Petition for Clarification*, the Company requests that the Authority approve a mechanism that will allow the Company to adjust fixed and volumetric rates annually.¹⁰

POSITION OF THE CONSUMER ADVOCATE

On April 8, 2016, the Consumer Advocate filed a response in opposition to B&W's request for consideration. As to the introduction of new evidence concerning the value of the pipeline, the Consumer Advocate asserts that B&W has not shown good cause for the Company's failure to introduce such evidence during the original hearing.¹¹ The Consumer Advocate further contends that undue prejudice would result if the Authority reopened the evidentiary record in this matter, and the Consumer Advocate would be required to duplicate the already considerable expense it has incurred to analyze the Company's rate increase request and prepare for the hearing that took place on September 14, 2015.¹²

The Consumer Advocate asserts that B&W made a strategic decision to argue at the hearing on the merits that the acquisition price of \$2.6 million that it paid for Gasco's assets should be included in rate base and that, as a result, the Company had no incentive to look for evidence that would undercut its position.¹³ The Consumer Advocate charges that only after the Authority made its decision was the Company motivated to find more information and alter its position, thus, now conceding that a value of \$1.2 million for the pipeline rate base is a reasonable result.

⁹ *Id.* at 6.

¹⁰ *Id.* at 6-7.

¹¹ *Consumer Advocate's Response to Petition to Reconsider*, p. 2 (April 8, 2016).

¹² *Id.*

¹³ *Id.* at 3.

With respect to B&W's reconsideration of the Authority's throughput determination, the Consumer Advocate contends that data from the first quarter of 2016 alone is too little from which to revise rates. Finally, the Consumer Advocate opposes B&W's request for periodic rate adjustments.

FINDINGS AND CONCLUSIONS

I. Value of the Pipeline for Purposes of Rate Base

Motions for Reconsideration are guided by Tenn. Code Ann. § 4-5-317 and Authority Rule 1220-01-02-.20. Generally, a motion for reconsideration is granted or denied based upon the existing record before an agency. Here, B&W seeks reconsideration based upon "new evidence" for an issue that was fully litigated during the hearing on the merits. Tenn. Code Ann. § 4-5-317 (d) provides as follows:

An order granting the petition and setting the matter for further proceedings shall state the extent and scope of the proceedings, which shall be limited to argument upon the existing record, and no new evidence shall be introduced unless the party proposing such evidence shows good cause for such party's failure to introduce the evidence in the original proceeding.

Thus, Tennessee law disfavors the introduction of new evidence unless a party can show good cause for that party's failure to introduce such evidence in the original proceeding.¹⁴ This prohibition allows for cases which have been fully litigated before an agency to have finality. In terms of rate-making, parties are not granted endless opportunities to re-litigate one or multiple issues based on new evidence in the same case *after* the hearing on the merits and the Authority's final order.

The Company has not made a showing of good-cause as required under Tenn. Code Ann. § 4-5-317(d). Moreover, granting reconsideration on this issue would require another evidentiary hearing in order to allow the Consumer Advocate, Navitas, and the Authority, the

¹⁴ Tenn. Code Ann. § 4-5-317(d).

opportunity to examine the evidence and question the witnesses. As the Consumer Advocate points out, the Company's primary position during the hearing focused on including the full purchase price of \$2.6 million paid for both the pipeline and ninety-six wells in rate base. Ultimately, during the hearing, B&W declared that there was no clear evidence of "what rate base ought to be" and that the issue was one of public policy and fairness.¹⁵

The Company now seeks to bring forth new evidence to support a more favorable rate base determination. Such new evidence, including at least one new additional witness, would require yet another contested hearing to allow the new evidence to be heard and for all parties to have the opportunity for cross-examination. A public utility bears the burden of proof when it seeks to increase rates.¹⁶ The record indicates the Company considered the value of the pipeline for purposes of rate base as a central issue for the hearing.¹⁷ When the Authority made its decision in this matter, it did so based upon the best evidence then before it. If after the conclusion of a rate case the Authority were to indulge in a practice of authorizing additional evidentiary hearings to consider issues singled out by a party, rate cases would become longer and more costly for all parties and, ultimately, for Tennessee consumers.

After due consideration, the panel voted unanimously to deny the *Petition for Reconsideration* with respect to the Authority's determination of the value of the pipeline for purposes of calculating rate base in this docket. The panel noted that due to the unique circumstances of this docket, the panel's decision should not be interpreted as precluding the issue of the value of the pipeline for purposes of rate base from being raised in a future rate case.

II. Acquisition Costs

As to the Company's claim that the Authority omitted \$225,585.31 in uncontested acquisition costs from rate base, the panel granted the *Petition for Reconsideration*. The Hearing

¹⁵ Transcript of Hearing, pp. 183-184 (September 14, 2015).

¹⁶ Tenn. Code Ann. § 65-5-103(a).

¹⁷ Transcript of Hearing, p. i2 (September 14, 2015).

Officer is directed to work with the parties in order to timely schedule arguments before the panel in this matter based upon the existing record.

III. Throughput Projections

Next, the Company proposes that the Authority reconsider the projections of throughput (gas moved through the pipeline). The panel notes that in order to address concerns of revenue volatility, the Authority shifted the bulk of recovery of the revenues to fixed charges. Moreover, the rates adopted to generate the revenue requirement were based upon the record in the docket, which included the Mcfs used by each customer and their computed proportionate share of total Mcfs. Moreover, it would be unsound policy to look at a single rate-making issue in isolation when both revenues and expenses are dynamic. One of the most important aspects of rate cases is the matching and forecasting of revenues and expenses based upon the evidentiary record.

After due consideration, the panel voted unanimously to deny the *Petition for Reconsideration* as to the Authority's determination of the pipeline's throughput. This ruling does not preclude the Company from filing a new rate case if revenues are falling short of expectations and/or there has been a change in the number of customers. Moreover, nothing prevents the Company from proposing an alternative form of rate-regulation pursuant to Tenn. Code Ann. § 65-5-103(d).

IV. The Company's Proposed Annual Rate Adjustment Tariff

On March 14, 2016, the panel denied the Company's *Petition for Clarification*, which sought an annual revenue adjustment mechanism.¹⁸ The Company's *Petition for Reconsideration* seeks the same relief. As discussed above, the Company's rate design allows the bulk of B&W's revenues to be collected via fixed charges. After due consideration, the panel voted unanimously to deny the *Petition for Reconsideration* as to the Company's request for an annual rate

¹⁸ *Order Denying the Petition for Clarification*, pp. 3-4 (April 7, 2016).

adjustment mechanism. This ruling does not preclude B&W from filing a petition in another docket seeking a form of alternative rate-making regulation or to otherwise file a new rate case should the Company experience changes in the number of customers and/or gas usage.

IT IS THEREFORE ORDERED THAT:

1. The *Petition for Reconsideration* filed by B&W Pipeline, LLC is granted, in part, and denied, in part.

2. The Hearing Officer is directed to work with the parties to schedule arguments, based upon the existing record, before the panel concerning B&W Pipeline, LLC's assertion that \$225,585.31 in acquisition costs claims should have been included in rate base and, thus, the final rate determination.

3. B&W Pipeline, LLC shall file tariffs with the Authority consistent with the *Final Order* in this matter.

Chairman Herbert H. Hilliard, Vice Chairman David F. Jones and Director Robin L. Morrison concur.

ATTEST:



Earl R. Taylor, Executive Director