

**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)

REPLY OF B&W PIPELINE, LLC

B&W Pipeline, LLC (“B&W”) submits the following response to the Consumer Advocate’s Brief concerning whether or not the Authority should have included \$225,585.31 in transaction costs in calculating the utility’s rate base. As the Consumer Advocate notes, the Authority has directed the parties to confine their arguments to “the existing record.” Consumer Advocate’s Brief, at 1.

Argument

At the hearing, B&W introduced evidence of the total cost the company paid to purchase the pipeline, which included \$225,585.31 in itemized, transaction costs. See, “Exhibit B” to B&W’s Petition to Reconsider. No party challenged the reasonableness of those costs or objected to the company’s proposal to include those costs in the pipeline’s purchase price in accordance with the Uniform System of Accounts.¹ In the absence of any evidence or argument to the contrary, the TRA should have included those transaction expenses when calculating the pipeline’s rate base. Since the Final Order makes no mention of this issue, the omission of these expenses from rate base appears to be inadvertent.

¹ B&W’s proposal is consistent with the Uniform System of Accounts which states that the transaction costs of acquiring a gas pipeline are added to the purchase price and “charged to account 102, Gas Plant Purchased or Sold.” See, FERC’s “Uniform System of Accounts for Gas Utilities,” page 523 (attached).

Having raised no objections – in testimony, in oral arguments, or in written briefs – to the utility’s inclusion of the transaction costs in rate base, the Consumer Advocate should not be allowed to do so after the record has closed. It is too late now for B&W to present rebuttal testimony, as the pipeline’s accounting witness could have done, defending the reasonableness of those expenses or their inclusion in rate base. In light of the Authority’s instructions that the parties address this issue “based on the existing record,” there should be little to debate.²

Nevertheless, the Consumer Advocate now raises for the first time several objections to the inclusion of the transaction costs in rate base.

The Advocate’s principal argument is that it is “improper” to include these costs “in rate base and allow for their recovery from consumers.” Consumer Advocate Brief, at 1. That sentence and the Advocate’s subsequent discussion of the issue show that the Advocate is confusing two, similar but different methods of cost recovery. On the one hand, B&W has proposed that the transaction costs be included in rate base which means that the costs will be recovered over the remaining life of the entire system, or about twenty years. On the other hand, the Advocate attacks proposals made by utilities in other cases to treat transaction costs as a regulatory asset to be recovered over much shorter periods of time. Those are two, different methods of cost recovery.

The Advocate relies upon and quotes at length from two regulatory decisions, one issued by the TRA involving the purchase of a small water system by the Tennessee American Water

² The Consumer Advocate’s newly discovered arguments all could have been addressed during the hearing had the Advocate raised them at the time. To litigate them now would require “yet another contested case hearing to allow the new evidence to be heard and for all parties to have the opportunity for cross-examination.” Order Granting In Part and Denying In Part the Petition for Reconsideration, at 5. This, the Authority has declined to do. “If after the conclusion of a rate case the Authority were to indulge in the 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.” Id.

Company (“TAWC”),³ and a 2008 opinion from the Missouri Public Service Commission involving the purchase of a large electric system by a larger one.⁴ In each case, the utility requested that the transaction costs be treated as a regulatory asset and recovered over a short period.

In the Missouri case, the utility asked that it be allowed to amortize its transaction costs and recover them over a period of only five years. Application of Great Plains Energy, supra, 266 P.U.R. 4th, at 469. Noting that under Generally Accepted Accounting Principles, these transaction costs would normally be added to the purchase price of the transaction (id., at 241), the Missouri Commission denied the utility’s request to use an alternative approach which would allow the utility to recover those costs more quickly. Id., at 469-473.

Similarly, TAWC asked in the Whitwell case that it be allowed to recover its transaction costs over the remaining life of the Whitwell water system. Rebuttal Testimony of Daniel P. Bickerton, at 2. It is not clear from the record what that time period would be but, given the very poor condition of the Whitwell system, (see, Direct Testimony of William H. Novak, at 4-5), the remaining life of those assets would have been relatively short. The Authority, in any event, denied the utility’s request, primarily because half of the transaction “costs” were owed to a TAWC-affiliated company. As the TRA pointed out, TAWC ratepayers were already paying for the affiliate’s services and, therefore, “allowing TAWC to recover these costs could result in a double recovery.” The Authority also noted that the utility had not provided evidence that “other due diligence costs for which it seeks recovery provide any benefit to ratepayers.” Order, at 21-22.

That case has little to do with this one. As previously discussed, TAWC was proposing, in effect, the accelerated recovery of its transaction costs. More importantly, the Authority’s

³ In Re: Joint Petition of Tennessee American Water Company, et al., Docket 12-00157, Order Approving Purchase Agreement et seq. issued October 15, 2013 (hereafter referred to as “the Whitwell case”).

⁴ In the Matter of the Joint Application of Great Plains Energy Incorporated, et al., 266 P.U.R. 4th 1 (Missouri Public Service Commission, 2008).

principal concern was over the issue of “double recovery,” which is not an issue here. Finally, it is clear that B&W’s purchase of the bankrupt pipeline served the public interest. As the Company told the Authority when it obtained a certificate of convenience and necessity, the pipeline is the sole source of natural gas for customers in Byrdstown and the surrounding area, and there is no question that the utility’s purchase of the pipeline and subsequent investment in the system has provided stability and security to the end users who depend upon the pipeline.

Perhaps recognizing that it is customary to include transaction costs in the purchase price and, therefore, in rate base, the Consumer Advocate also argues that, even if the Authority agrees to include the transaction costs, the agency should “use the 89%/11% figure developed by Ralph Smith” to allocate the transaction costs between the pipeline and the wells. Consumer Advocate’s Brief, at 4-5. Here again, no allocation was proposed at the hearing, and it is too late to suggest it now.⁵ Moreover, there is no evidence in the record to suggest that the transaction costs would have been any less if the seller had agreed to sell the pipeline separately from the oil and gas wells.

Conclusion

B&W proposed that its transaction expenses be added to the purchase price of the pipeline and included in the utility’s rate base. In the absence of any evidence in the record disputing those costs or objecting to their inclusion in rate base, B&W’s proposal should be accepted by the Authority. Even if the Authority allows the Consumer Advocate to raise new issues long after the record has closed, those arguments, based on misunderstanding and confusion, have no merit.

⁵ The Advocate states (at 5), “If, however, the TRA attempts to develop an allocation factor, it should use the 89%/11% figure developed by Ralph Smith, 89% oil wells/11% pipeline.” The Advocate’s statement makes it appear that Mr. Smith recommended that the Authority adopt a cost allocation factor of “89% oil wells/ 11% pipeline.” He did not.

Mr. Smith calculated that “11% of B&W’s gross profit for 2012 was from gas transportation and 89% was from oil and gas sales and royalties.” Pre-filed Direct Testimony of Ralph Smith, at 17. Mr. Smith used those figures to argue that B&W did not receive adequate compensation for the oil and gas wells that B&W transferred to its affiliate Rugby Energy, LLC. *Id.*, at 18. Nowhere in his testimony does he recommend using those figures to allocate costs between the pipeline and the wells.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of June, 2016, 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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Exhibit 1

Page 523 from the "Uniform System of Accounts for Gas Utilities" of the Federal Energy Regulatory Commission

5. Gas plant purchased or sold. A. When gas plant constituting an operating unit or system is acquired by purchase, merger, consolidation, liquidation, or otherwise, after the effective date of this system of accounts, the costs of acquisition, including expenses incidental thereto properly includible in gas plant, shall be charged to account 102, Gas Plant Purchased or Sold.

B. The accounting for the acquisition shall then be completed as follows:

(1) The original cost of plant, estimated if not known, shall be credited to account 102, Gas Plant Purchased or Sold, and concurrently charged to the appropriate gas plant in service accounts and to account 104, Gas Plant Leased to Others, account 105, Gas Plant Held for Future Use, 105.1, Production Properties Held for Future Use, and account 107, Construction Work in Progress--Gas, as appropriate.

(2) The depreciation, depletion, and amortization applicable to the original cost of the properties purchased, shall be charged to account 102, Gas Plant Purchased or Sold, and concurrently credited to the appropriate account for accumulated provision for depreciation, depletion or amortization.

(3) The cost to the utility of any property includible in account 121, Nonutility Property, shall be transferred thereto.

(4) The amount remaining in account 102, Gas Plant Purchased or Sold, shall then be closed to account 114, Gas Plant Acquisition Adjustments.

C. If property acquired in the purchase of an operating unit or system is in such physical condition when acquired that it is necessary substantially to rehabilitate it in order to bring the property up to the standards of the utility, the cost of such work, except replacements, shall be accounted for as a part of the purchase price of the property.

D. When any property acquired as an operating unit or system includes duplicate or other plant which will be retired by the accounting utility in the reconstruction of the acquired property or its consolidation with previously

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owned property, the proposed accounting for such property shall be presented to the Commission.

E. In connection with the acquisition of gas plant constituting an operating unit or system, the utility shall procure, if possible, all existing records relating to the property acquired, or certified copies thereof, and shall preserve such records in conformity with regulations or practices governing the preservation of records of its own construction.

F. When gas plant constituting an operating unit or system is sold, conveyed, or transferred to another by sale, merger, consolidation, or otherwise, the book cost of the property sold or transferred to another shall be credited to the appropriate utility plant accounts, including amounts carried in account 114, Gas Plant Acquisition Adjustments. The amounts (estimated if not known) carried with respect thereto in the accounts for accumulated provision for depreciation, depletion, and amortization and in account 252, Customer Advances for Construction, shall be charged to such accounts and the contra entries made to account 102, Gas Plant Purchased or Sold. Unless otherwise ordered by the