

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 4, 2016

IN RE:

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

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**DOCKET NO.
15-00042**

**FINAL ORDER DENYING
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 June 20, 2016, for consideration and final disposition 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 William H. Novak, Pre-filed Direct Testimony, p. 9 (April 2, 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 The panel granted in part and denied in part the *Petition for Reconsideration*.⁵ The Company's *Petition for Reconsideration* was granted to the extent that B&W asserted that the Authority omitted \$225,585.31 in acquisition expenses from the Company's rate base, which was not challenged by the intervening parties.⁶ A briefing schedule was established by the Hearing Officer in anticipation of deliberations by the hearing panel on June 20, 2016.⁷ Navitas did not submit a brief and no party sought oral argument.

POSITION OF B&W PIPELINE, LLC

As part of the Company's *Petition for Reconsideration*, B&W argues that the Authority omitted \$225,585.31 in acquisition expenses from rate base. The Company asserts that the costs were undisputed.

POSITION OF THE CONSUMER ADVOCATE

The Consumer Advocate opposes B&W's request to reconsider and recover acquisition costs in the amount of \$225,585.31. The largest item included in acquisition costs in dollar terms is "due diligence" cost of \$218,392.52. The Consumer Advocate asserts that the due diligence costs were not incurred to provide service to consumers. Further, these costs benefitted

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 *Order Granting in Part, and Denying in Part, the Petition for Reconsideration*, pp. 4-7 (May 16, 2016).

⁶ *Id.* at 5.

⁷ *Order Establishing Briefing Schedule* (May 19, 2016).

owners and shareholders instead of consumers, and it would therefore be improper for the due diligence costs to be included in rate base for recovery from consumers.⁸ The Consumer Advocate opined that the issue of whether due diligence costs should be allowed for recovery was answered with the Authority's decision in TRA Docket No. 12-00157.⁹ The Consumer Advocate further argues that the due diligence costs were excluded from recovery in TRA Docket No. 12-00157 because the costs benefited shareholders and not consumers.¹⁰ The Consumer Advocate asserts that there is no proof that B&W's due diligence costs were associated with the delivery of utility services or were incurred to safeguard the assets of the Company.

The Consumer Advocate argues these costs were incurred to protect the interests of shareholders. The Consumer Advocate opines that this argument also applies to the \$4,004 of "organization start-up costs" and states that there is no evidence that the costs were incurred to do anything other than form the company in a way that benefited the owners. The Consumer Advocate further submits that the organization start-up costs could be excessive if the costs were to form a corporation or LLC.¹¹

The Consumer Advocate relies upon the Authority's decision in TRA Docket No. 12-00157 as consistent with acquisition costs decisions in other states, referencing a Missouri Public Service Commission decision. The Consumer Advocate stated that allowing recovery of transactional costs would have the same effect of artificially inflating rate base in the same way

⁸ *Consumer Advocate's Brief in Opposition to the Recovery of \$225,585.31 in Acquisition Costs*, p. 1 (May 26, 2016).

⁹ *In re: Joint Petition of Tennessee American Water Company, The City of Whitwell, Tennessee, and the Town of Powells Crossroads, Tennessee for Approval of a Purchase Agreement and a Water Franchise Agreement and for the Issuance of a Certificate of Convenience and Necessity*.

¹⁰ *In re: Joint Petition of Tennessee American Water Company, The City of Whitwell, Tennessee, and the Town of Powells Crossroads, Tennessee for Approval of a Purchase Agreement and a Water Franchise Agreement and for the Issuance of a Certificate of Convenience and Necessity*.

¹¹ *Consumer Advocate's Brief in Opposition to the Recovery of \$225,585.31 in Acquisition Costs*, pp. 2-3 (May 26, 2016).

as allowing recovery of an acquisition premium. Additionally, the Missouri Public Service Commission found public interest would not be impaired by denying recovery.¹²

In the alternative, the Consumer Advocate asserts that if the TRA were to allow recovery of due diligence costs and organizational start-up costs, that the costs should be allocated between the oil wells portion and the pipeline portion of the purchase. If the TRA, however, determines to develop an allocation factor, the Consumer Advocate advises that an allocation factor of 89% to the oil wells and 11% to the pipeline be used, as suggested by Ralph Smith.¹³ Finally, the Consumer Advocate asserts that there is nothing in the record to substantiate the inclusion of “other equipment,” “property taxes,” and “rights of way.”¹⁴

REPLY OF B&W PIPELINE, LLC

B&W counters that the Consumer Advocate should not be allowed to raise an objection to the “transaction costs” as the Consumer Advocate made no objection to them in pre-filed testimony or at the hearing on the merits.¹⁵ B&W further argues that the Tennessee and Missouri decisions, which the Consumer Advocate relies upon, address the recovery of transaction costs through treatment as a regulatory asset rather than as a part of the purchase price and included as a part of rate base, as proposed by B&W.¹⁶ The Company submits that based on the existing record, there is no evidence supporting the exclusion of the transaction costs.

FINDINGS AND CONCLUSIONS

B&W included the acquisition costs of \$225,585.31 as part of the purchase price of \$2.6 million as part of the Company’s proposed rate base. The Authority previously set rates in a decision which rejected the purchase price of the system put forth by the Company and included the acquisition costs of \$225,585.31 at issue upon reconsideration. By rejecting the Company’s

¹² *Id.* at 4.

¹³ *Id.* at 4-5.

¹⁴ *Id.* at 5.

¹⁵ *Reply of B&W Pipeline, LLC*, p. 2 (June 1, 2016).

¹⁶ *Id.* at 2-3.

proposal to establish rates based on the purchase price, the Authority also tacitly rejected the acquisition costs related to the purchase. After reviewing and reconsidering the record, the panel found that the Authority made its decision based on the best evidence it had before it and voted unanimously to affirm its decision.

IT IS THEREFORE ORDERED THAT:

1. The *Petition for Reconsideration* filed by B&W Pipeline, LLC is denied.
2. B&W Pipeline, LLC shall file tariffs in accordance with the *Final Order Setting Rates*.

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

ATTEST:



Earl R. Taylor, Executive Director