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March 17, 2017

**VIA ELECTRONIC FILING**

Ms. Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

**Re: Application of B&W Pipeline, Inc. for a Limited Jurisdiction Blanket Certificate of  
Public Convenience and Necessity Pursuant to 18 C.F.R. § 284.224  
Docket No. 15-00042**

Dear Ms. Bose:

Please accept for filing with the Federal Energy Regulatory Commission ("Commission") the enclosed Application of B&W Pipeline, Inc. ("B&W"), for a Limited Jurisdiction Blanket Certificate of Public Convenience and Necessity Pursuant to 18 C.F.R. § 284.224 ("Application").

In accordance with 18 C.F.R. § 381.207, B&W has paid \$1,000 for the blanket certificate filing fee.

The Application includes several attached exhibits including a system map, a form of notice suitable for publication in the Federal Register, and the rates, terms and conditions of service approved by the Tennessee Regulatory Authority for B&W's intrastate transportation services. As ordered by the TRA, B&W will apply the same tariff to its interstate services.

If you have any questions or concerns regarding this matter, please do not hesitate to contact me at (615) 252-2363.

Very truly yours,

BRADLEY ARANT BOULT CUMMINGS LLP

By:

A handwritten signature in dark ink, appearing to read "Henry Walker", written over a horizontal line.  
Henry Walker

HW/dbi  
Enclosures

**B&W PIPELINE, L.L.C.** ) **DOCKET NO.** \_\_\_\_\_

Title:

**B&W PIPELINE, LLC** ) **DOCKET NO.** \_\_\_\_\_

B&W Pipeline, Inc. (“B&W” or “the Company”), is a natural gas pipeline, approximately fifty miles in length, located wholly within Tennessee and regulated by the Tennessee Regulatory Authority (“TRA” or “Authority”). Approximately one-fourth of the total amount of gas transported on the pipeline is delivered to a Tennessee distribution company and consumed in Tennessee. Approximately three-fourth’s of the gas is delivered at a meter located in Tennessee to a Kentucky distribution company which transports the gas across the Tennessee-Kentucky line to customers in Kentucky. The pipeline, built during the 1980s, was not certificated in Tennessee until 2015 and has never been certificated by the Federal Energy Regulatory Commission (“FERC” or “the Commission”).<sup>1</sup> On April 29, 2016, B&W self-reported to the FERCs enforcement office that the pipeline has been operating without interstate authority. Pursuant to instructions from the TRA and consultations with the FERC staff, B&W files this application with FERC for a blanket certificate to transport natural gas in interstate commerce in the same manner that intrastate pipelines are authorized to do under Subpart C of Part 284 of the Commission’s regulations. 18 C.F.R. § 284.224. As instructed by the TRA, B&W also requests that it be allowed to charge the

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intrastate rates approved by the TRA for the transportation of all gas on the pipeline, whether the gas is ultimately consumed in Tennessee or Kentucky.

**I. CORRESPONDENCE AND COMMUNICATIONS.**

Correspondence and communications with respect to this Application should be addressed to the following:

Henry Walker\*  
Bradley  
1600 Division Street, Suite 700  
Nashville, TN 37203  
[hwalker@bradley.com](mailto:hwalker@bradley.com)

Rafael E. Ramon  
Enrema  
10025 Investment Drive, Suite 160  
Knoxville, TN 37932  
[reramon@enrema.com](mailto:reramon@enrema.com)

\*B&W requests that the Commission place this person on the official service list for this proceeding.

**II. DESCRIPTION OF THE APPLICANT.**

The legal name of the applicant is B&W Pipeline, Inc. B&W is a fifty-mile-long pipeline, physically located entirely in Tennessee and operating under a certificate of convenience and necessity issued by the Tennessee Regulatory Authority (“TRA”). B&W is organized and exists under the laws of the State of Tennessee. B&W takes natural gas from an interstate pipeline owned by Spectra Energy Corp. (“Spectra”) and delivers the gas to Navitas TN NG, LLC (“Navitas-Tennessee”), a Tennessee distribution company, and Navitas KY NG, LLC (“Navitas-Kentucky”), a Kentucky distribution company and an affiliate of Navitas-Tennessee. (Hereafter, both distribution companies are referred to as “Navitas” except where otherwise indicated.) A map of the pipeline is attached. **Exhibit A.**

As described in the TRA Order granting B&W a certificate of convenience and necessity and as described further in the TRA order setting B&W's intrastate transportation rates,<sup>2</sup> the current owners of B&W purchased the pipeline in 2010 following the bankruptcy of Gasco Distribution Systems, Inc. ("Gasco"), a local gas distribution company which had been providing natural gas service to end-users in Tennessee and Kentucky. Gasco's distribution business in Kentucky was regulated by the Kentucky Public Services Commission. Its distribution in Tennessee was regulated by the TRA. No federal or state commission, however, exercised ratemaking jurisdiction over the pipeline, nor was the pipeline included among Gasco's regulated assets. Following Gasco's bankruptcy, the utility's distribution assets in Tennessee and Kentucky were sold to Navitas while the pipeline which, along with some local gas and oil wells, was sold to B&W.

After B&W purchased the pipeline and Navitas bought the distribution networks in Tennessee and Kentucky, Navitas and B&W agreed to a five-year, transportation contract. When the contract neared its expiration date, the parties approached the TRA about setting a new transportation rate. Prior to the meeting, the new pipeline owners were not aware that the pipeline was subject to TRA regulation. At the meeting, the TRA staff informed B&W that the utility must apply for a certificate of convenience and necessity from the Authority. B&W filed an application on December 6, 2013. The TRA granted the certificate on January 8, 2015. **Exhibit B.**

Shortly after receiving its state certificate, B&W filed its first rate case. During the rate hearing, the TRA *sua sponte* raised the issue of whether the state agency had jurisdiction to establish a transportation rate for gas that, while transported from one point in Tennessee to another, was eventually consumed in Kentucky. This was the first time that anyone at the TRA

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<sup>2</sup> Copies of both TRA orders are attached. See, **Exhibits B and C.**

had suggested that B&W might be subject to federal regulation. The agency requested briefs on the jurisdiction issue and also contacted staff at the FERC for guidance. In an Order issued March 10, 2016, the state agency established a transportation rate for that portion of B&W's throughput which is consumed within Tennessee but stated that the TRA did not have jurisdiction to set a transportation rate for gas carried by B&W that is ultimately consumed by customers in Kentucky. The Authority ordered B&W to apply to the FERC for "an Order No. 63 certificate exemption pursuant to 18 C.F.R. § 284.224" and further directed B&W "to utilize this Order and the rate established herein for FERC for review." **Exhibit C**, "Final Order Setting Rates," at 6. The TRA stated that "it is the intent of the Authority" that the FERC grant B&W's application and authorize B&W to charge "the rate set in this Order for all gas transported on B&W's pipeline, whether ultimately consumed in Tennessee or Kentucky." *Id.*, at 22.

### **III. NEED FOR BLANKET CERTIFICATE.**

The purpose of this Application is to permit B&W to continue transporting gas from Spectra and from local wells to Navitas-Kentucky for distribution to local customers in Kentucky. These customers have no other source of natural gas. As explained, approximately one-fourth of the total amount of gas transported by B&W is delivered to Navitas-Tennessee and consumed in Tennessee. The remainder of the gas is delivered by B&W to Navitas-Kentucky at a meter located in Tennessee and transported by Navitas-Kentucky across the state line for consumption in Kentucky. With respect to this transportation service, B&W submits that the granting of a blanket certificate will enhance the availability of service to natural gas consumers in this remote, rural area. B&W also submits that such certification is in the public interest, is not expected to be opposed by any party, and is consistent with existing Commission policies.

#### **IV. ADDITIONAL INFORMATION REQUIRED BY 18 C.F.R. § 284.224.**

In accordance with 18 C.F.R. § 284.224(c), B&W provides the following additional information to support its request for a blanket certificate of public convenience and necessity:

##### **A. VOLUMES.**

The volume of natural gas that was received during the most recent 12-month period (ending December 31, 2016) by B&W within or at the boundary of a state was approximately 119,000 Mcfs. The volume of natural gas that was received during the most recent 12-month period (ending December 31, 2016) by B&W within or at the boundary of a state that was exempt from the NGA jurisdiction of the Commission by reason of Section 1(c) of the NGA was approximately 29,000 Mcfs. The total volume of natural gas received by B&W from all sources during the same period was approximately 119,000 Mcfs.

##### **B. DECLARATIONS OF EXEMPTIONS.**

There are currently no valid determinations or declarations of exemption issued by the Commission under Section 1(c) of the NGA, and none have been sought.

##### **C. STATEMENT OF COMPLIANCE.**

In making this Application, B&W agrees to comply with the conditions set forth in subsection (e) of 18 C.F.R. § 284.224 which provides that any transaction authorized under the blanket certificate is subject to the same rates and charges, terms and conditions and reporting requirements that apply under Subparts C and D of Part 284 of the Commission's regulations.

##### **D. FORM OF NOTICE.**

A form of notice suitable for publication in the Federal Register and consistent with the requirements of 18 C.F.R. § 157.9 is attached hereto. **Exhibit D.**

**E. METHODOLOGY OF RATES FOR TRANSPORTATION SERVICES TO BE RENDERED**

As ordered by the TRA, B&W will apply the transportation rates established by the TRA to both intrastate and interstate services.<sup>3</sup> A copy of B&W's intrastate tariff is attached. **Exhibit**

**E.**

**F. APPLICATION FEE.**

B&W has paid \$1,000 to meet the fee requirements for blanket certificate applications pursuant to Sections 284.224(c) and 381.207 of the Commission's regulations.

**V. ENVIRONMENTAL EFFECTS.**

No environmental report is required for this Application because it qualifies for a categorical exclusion under 18 C.F.R. § 380.4(a)(22).

**VI. STATEMENT OF OPERATING CONDITIONS.**

B&W's operating conditions are set forth in its intrastate tariff approved by the TRA and attached to this application. **Exhibit E.**

**VII. REQUEST FOR WAIVERS.**

B&W respectfully requests that the Commission confirm that the Company will be exempt from the Commission's requirements, *i.e.*, accounting rules and reporting requirements, applicable to NGA jurisdictional entities other than Section 284.224 certificate holders.

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<sup>3</sup> B&W has appealed the TRA's decision on the grounds that the intrastate rates set by the agency are not sufficient to allow B&W to earn a fair return on its investment in the pipeline. In the meantime, B&W is charging the TRA-ordered rates. Should, as a result of the appeal, the Court or the TRA orders an increase in B&W's intrastate rates, B&W will apply the increased rate to both its intrastate and interstate services on a prospective basis.



**VIII. EXPEDITED APPROVAL REQUESTED.**

Although the TRA's final decision in B&W's rate case was not issued until August 4, 2016, the Authority ordered that its decision be effective January 1, 2016. Based on the TRA's determination that the Authority lacks jurisdiction to set rates for the transportation of gas that is ultimately consumed in Kentucky, Navitas has refused to pay B&W for the transportation of gas delivered to Navitas-Kentucky since January 1, 2016. B&W therefore requests expedited treatment of this Application and asks that the Commission confirm that B&W may bill Navitas for interstate transportation services effective January 1, 2016.

**IX. CONCLUSION.**

WHEREFORE, for all the foregoing reasons, B&W respectfully requests that the Commission grant a blanket certificate of public convenience and necessity pursuant to Section 284.224 of the Commission's regulations authorizing B&W to transport natural gas in interstate commerce, and any and all such waivers or additional and further relief as may be necessary to grant this authorization. B&W submits that the blanket certificate and authorizations requested herein are required by the public convenience and necessity in order to optimize utilization of transportation capacity on B&W's system and encourage the production and marketing of Tennessee natural gas supplies.

Respectfully submitted,

BRADLEY

By: 

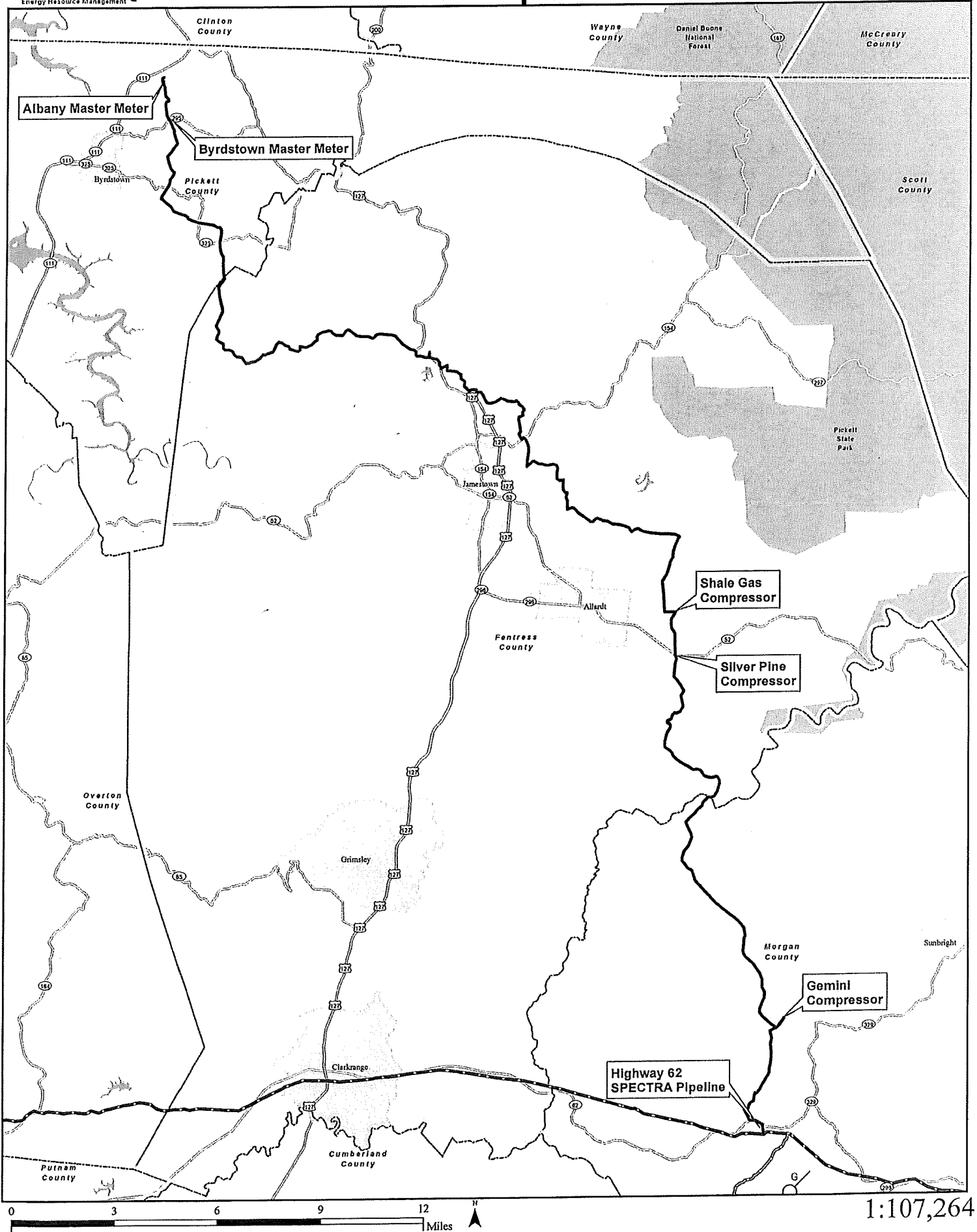
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*Attorney for B&W Pipeline, LLC*

## **EXHIBIT A**

### **Map of the B&W Pipeline System**

Attached.

# B&W Pipeline



**EXHIBIT B**

**Order of the Tennessee Regulatory Authority  
granting a certificate of convenience and necessity to B&W Pipeline**

Attached.

**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**

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

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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.<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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.

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<sup>2</sup> 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).

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

<sup>4</sup> 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.<sup>5</sup>

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.

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<sup>5</sup> 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.<sup>6</sup>

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.

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<sup>6</sup> 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**

**EXHIBIT C**

**Orders of the Tennessee Regulatory Authority  
granting B&W Pipeline an increase in rates  
and denying petition for reconsideration**

Attached.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**March 10, 2016**

**IN RE:**

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

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**DOCKET NO.  
15-00042**

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**FINAL ORDER SETTING RATES**

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This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones and Director Robin Morrison of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on December 14, 2015, for consideration of the *Petition of B&W Pipeline, LLC for an Increase in Rates* filed by B&W Pipeline, LLC ("B&W" or the "Company") on April 2, 2015.

Upon consideration of the entire record, including all exhibits and the testimony of the witnesses, the panel unanimously concluded that the Company had a Revenue Deficiency of \$114,118 which should be recovered through increases to the base and volumetric rates.

**BACKGROUND AND TRAVEL OF THE CASE**

B&W as a public utility is subject to the Authority's jurisdiction. B&W owns a pipeline consisting of approximately fifty miles of natural gas pipeline located inside the State of Tennessee running through Pickett, Morgan and Fentress counties. The pipeline was formerly held by The Titan Energy Group, a subsidiary of Gasco Distribution Systems, Inc. ("Gasco"), an entity that went bankrupt.<sup>1</sup> As a result of the bankruptcy, Gasco's pipeline and local distribution systems were separated. B&W acquired the pipeline portion of Gasco and was granted a

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<sup>1</sup> *Application of B&W Pipeline, LLC for a Certificate of Convenience and Necessity*, Docket No. 13-00151, *Order Granting Certificate of Public Convenience and Necessity*, p. 1, (January 8, 2015).

Certificate of Public Convenience and Necessity (“CCN”) by the Authority in Docket No. 13-00151. The pipeline and approximately ninety-six (96) oil and gas wells were acquired in 2010.<sup>2</sup> B&W is a wholly owned subsidiary of FIR Energy. B&W is provided administrative and management services from an affiliate, Enrema, LLC (“Enrema”).<sup>3</sup> Gasco’s former local distribution system operates as a public utility by Navitas TN NG, LLC (“Navitas”).

On April 2, 2015, B&W filed the *Petition* requesting approval of a rate increase. B&W’s rate prior to this proceeding was \$0.60 per Mcf stemming from a contract rate that was in place at the time of acquisition.<sup>4</sup> Based upon the Company’s projections, it estimates a net operating loss of \$256,111 for the attrition period ending December 31, 2016. Based upon the testimony, methodology and projections employed by B&W, the Company estimates additional revenue of \$525,648 is necessary in order to achieve the requested rate of return of 10.12%.<sup>5</sup> In total, B&W’s *Petition* sought to increase the rate from \$0.60 to \$3.69 per Mcf.<sup>6</sup>

During the Authority Conference on April 20, 2015, the panel voted unanimously to convene a contested case proceeding and appoint the Authority’s General Counsel or her designee to act as Hearing Officer to prepare this matter for hearing, including establishing a procedural schedule, entering a protective order, and ruling on intervention requests and discovery issues. On April 20, 2015, the Consumer Advocate and Protection Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) filed a *Petition to Intervene*. Navitas filed a *Petition to Intervene* on April 28, 2015. The respective interventions of the Consumer Advocate and Navitas were subsequently granted by the Hearing Officer.<sup>7</sup> Following

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<sup>2</sup> *Id.*, at fn. 2 (January 8, 2015); Transcript of Hearing, p. 49 (September 14, 2015).

<sup>3</sup> Transcript of Hearing, pp. 35-36 (September 14, 2015).

<sup>4</sup> Pre-filed Direct Testimony of Rafael Ramon, p. 4 (April 2, 2015).

<sup>5</sup> *Corrected Company Exhibits*, Schedule 1 (May 22, 2015).

<sup>6</sup> Pre-filed Direct Testimony of William H. Novak, p. 9 (April 2, 2015).

<sup>7</sup> *Order Granting the Consumer Advocate’s and Navitas TN NG, LLC’s Petitions to Intervene* (May 29, 2015).

the submission of discovery and pre-filed testimony pursuant to a procedural schedule, the parties prepared for a hearing.

### **THE HEARING**

A Hearing on this matter was held on September 14, 2015, as noticed by the Authority on September 4, 2015. Participating in the Hearing were the following parties:

B&W Pipeline, LLC – Henry M. Walker, Esq., Bradley Arant Boult Cummings, LLP, 1600 Division Street, Suite 700, Nashville, TN 37203.

Consumer Advocate and Protection Division – Rachel Newton, Office of the Attorney General and Reporter, P.O. Box 20207, Nashville TN 37202-0207.

Navitas TN NG, LLC – Klint Alexander, Esq., Baker Donnelson Bearman Caldwell & Berkowitz, P.C., 211 Commerce Street, Suite 800, Nashville, TN 37201.

Upon request of the Consumer Advocate and without the objection of any party, the panel took administrative notice of Docket No. 13-00151.<sup>8</sup> At the Hearing, the panel heard testimony from witnesses Hal Novak and Rafael Ramon, on behalf of the Company, Ralph Smith on behalf of the Consumer Advocate and Thomas Hartline on behalf of Navitas. Cross-examination of Dr. Christopher Klein, a witness on behalf of the Consumer Advocate's proposed rate of return, was entered into the record without the need for Dr. Klein to offer testimony at the hearing.<sup>9</sup>

In addition, members of the public were given the opportunity to present comments to the panel. No members of the public sought recognition to do so.

### **POST-HEARING FILINGS**

At the direction of the panel, the Consumer Advocate and B&W filed post-hearing briefs on September 30, 2015 and October 9, 2015, respectively, concerning B&W's Hinshaw status and the extent of the Authority's jurisdiction to set rates. On October 7, 2015, the TRA Staff

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<sup>8</sup> Transcript of Hearing, pp. 6-7 (September 14, 2015).

<sup>9</sup> *Id.* at 12, 110.

issued data requests to B&W and Navitas concerning throughput volumes.<sup>10</sup> B&W filed a response on October 15, 2015 and Navitas filed a response on October 21, 2015. After the filing of the data responses, the parties further informed the hearing officer that they did not seek to make additional argument or request further cross-examination of the evidence.<sup>11</sup>

B&W filed an *Unopposed Motion to Postpone Decision Until December Conference*, which stated that the parties required additional time to continue settlement negotiations and requesting the Authority to wait to make a decision until the Authority Conference scheduled for December 14, 2015.<sup>12</sup> In its motion, B&W agreed to waive for another thirty (30) days the six month deadline set forth in Tenn. Code Ann. § 65-5-103(b)(1), which authorizes a public utility to place proposed rates into effect, subject to certain conditions, six months after the filing of a petition to increase rates.

#### **FINDINGS AND CONCLUSIONS ON JURISDICTION AND B&W'S HINSHAW STATUS**

The Authority has jurisdiction to set the rates of public utilities operating in the State of Tennessee.<sup>13</sup> B&W is a public utility which was granted a CCN by the Authority in Docket No. 13-00151.<sup>14</sup> B&W's pipeline is approximately fifty miles long and runs through Pickett, Morgan and Fentress counties within the borders of the State of Tennessee. The northern end of the pipeline ends just south of the Kentucky border near Byrdstown, Tennessee.<sup>15</sup> The gas transported by B&W's pipeline is received and delivered within the State of Tennessee. However, during the course of the hearing, testimony from the parties and responses to questions

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<sup>10</sup> *TRA Third Data Request to B&W Pipeline, LLC* (October 7, 2015); *TRA Third Data Request to Navitas TN LG, LLC* (October 7, 2015).

<sup>11</sup> *Order* (November 16, 2015).

<sup>12</sup> *Unopposed Motion to Postpone Decision Until December Conference* (October 26, 2015).

<sup>13</sup> Tenn. Code Ann. §§ 65-4-101(6); 65-4-104; 65-5-101, *et seq.*

<sup>14</sup> *Application of B&W Pipeline, LLC for a Certificate of Convenience and Necessity*, Docket No. 13-00151, *Order Granting Certificate of Public Convenience and Necessity* (January 8, 2015).

<sup>15</sup> *Post-Hearing Brief of B&W Pipeline, LLC* (October 9, 2015). A map attached to the Company's post-hearing brief shows the location of the pipeline.

by the TRA Staff indicated that a portion of the gas B&W delivers to Navitas is ultimately consumed in the State of Kentucky.<sup>16</sup>

The Federal Energy Regulatory Commission (“FERC”) has jurisdiction over interstate pipelines, with exceptions.<sup>17</sup> A pipeline is exempt from FERC regulation if it meets the “Hinshaw” standards pursuant to 15 U.S.C. § 717(c). To qualify for Hinshaw status, a pipeline must be subject to state regulation, receive all of its out-of-state gas from persons within or at the boundary of a state and such gas *must be ultimately consumed within the state*.<sup>18</sup> Congress has concluded such pipelines are matters primarily of local concern, and so are more appropriately regulated by pertinent state agencies, such as the TRA, rather than FERC.<sup>19</sup>

As a result of information arising during the hearing that B&W might not qualify for Hinshaw status, the panel requested that the parties file post-hearing briefs concerning B&W’s Hinshaw status and the Authority’s jurisdiction to set the rates of B&W.<sup>20</sup> In post-hearing filings, the Consumer Advocate and B&W agreed that B&W is not a Hinshaw pipeline; however, both contend that the Authority may assert jurisdiction as to rates charged for the gas delivered and ultimately consumed in Tennessee pending FERC’s consideration of blanket certificate pursuant to 18 C.F.R. § 284.224.<sup>21</sup>

While B&W both receives and delivers natural gas within the borders of the state; however, the record reflects that a large portion of the gas B&W delivers is ultimately consumed beyond Tennessee’s borders. Thus, the panel finds that B&W is not a Hinshaw pipeline. Nevertheless, upon examination of FERC’s regulatory framework, application of 15 U.S.C.

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<sup>16</sup> Transcript of Hearing, pp. 100-102, 108-109, 134-136, 177 (September 14, 2015).

<sup>17</sup> 15 U.S.C. § 717 *et seq.*

<sup>18</sup> 15 U.S.C. § 717(c). (emphasis added).

<sup>19</sup> *Id.*

<sup>20</sup> Transcript of Hearing, p. 193 (September 14, 2015).

<sup>21</sup> *Post-Hearing Brief of B&W Pipeline, LLC* (October 9, 2015); *Post-Hearing Brief of the Consumer Advocate*, (October 9, 2015). Navitas did not file a post-hearing brief and did not assert a position on whether B&W was a Hinshaw pipeline.

§ 717(c) and applicable federal regulations, specifically 18 C.F.R. § 284.224, the panel finds that the Authority has the jurisdiction to set a rate under traditional rate-making principles that applies to all gas that is delivered to B&W's customers that is ultimately consumed within Tennessee.

Therefore, the panel concludes that as B&W is not a Hinshaw pipeline, the Company must address its status with FERC, specifically by applying for an Order No. 63 certificate exemption pursuant to 18 C.F.R. § 284.224.<sup>22</sup> A FERC Order 63 certificate would allow B&W to acquire Hinshaw-like status with FERC and thus authorize the TRA to set rates for all of the gas delivered by B&W to Navitas, including for those volumes consumed by customers in Kentucky. As part of the application for a blanket certificate, B&W shall utilize this Order and the rate established herein for FERC for review.

#### **CRITERIA FOR JUST AND REASONABLE RATES**

In setting rates for public utilities, the Authority balances the interests of the utilities subject to its jurisdiction with the interests of Tennessee consumers, i.e., it is obligated to fix just and reasonable rates.<sup>23</sup> The Authority must also approve rates that provide regulated utilities the opportunity to earn a just and reasonable return on their investments.<sup>24</sup> The Authority considers petitions for a rate increase, filed pursuant to Tenn. Code Ann. § 65-5-203, in light of the following criteria:

1. The investment or rate base upon which the utility should be permitted to earn a fair rate of return;
2. The proper level of revenues for the utility;
3. The proper level of expenses for the utility; and

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<sup>22</sup> B&W indicated it has consulted with FERC and acknowledged that the Company needs to obtain a blanket certificate under 18 C.F.R. § 284.224. *Post-Hearing Brief of B&W Pipeline, LLC*, at 3, fn. 5 (October 9, 2015).

<sup>23</sup> Tenn. Code Ann. § 65-5-201 (2015).

<sup>24</sup> See *Bluefield Water Works and Improvement Company v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 43 S.Ct. 675 (1923).



4. The rate of return the utility should earn.

Applying these criteria, and upon consideration of the entire record, including all exhibits and the testimony of the witnesses, the panel made the following findings and conclusions.

#### **CONTESTED ISSUES**

A number of aspects of the proposed rate increase were contested by the intervening parties. Based on the evidence in the record and the Authority's own expertise, the panel considered the arguments and positions of the parties, summarized here, and made the following determinations.

##### **A. Revenues/Gas Volumes**

The Company's total throughput for the attrition period of 169,861 Mcfs included actual test period transportation throughput for Navitas of 60,411 Mcfs, B&W's anticipated throughput for B&W's affiliates of 47,450 Mcfs, and B&W's anticipated throughput for Navitas's two additional customers of 62,000 Mcfs. The Company's throughput produced revenue of \$101,917 for the attrition period.

The Consumer Advocate's throughput calculation of 212,628 Mcfs includes 47,450 Mcfs for B&W's anticipated transportation volumes for B&W's affiliates, 45,178 Mcf for Navitas's provided throughput for its current customers and 120,000 Mcfs for Navitas's projected throughput for the two new customers. The source of Navitas's throughput projections utilized by Mr. Smith were provided as a response to the Authority's July 17, 2015 data request.<sup>25</sup> The Consumer Advocate's throughput produced revenue of \$127,577 for the attrition period.

Based upon the evidence in the record, the panel determined that the pipeline's rates should include all throughput that is transported across the pipeline and not just Navitas's gas sold to customers. Neglecting to include the total transported throughput would understate

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<sup>25</sup> Transcript of Hearing, p. 113 (September 14, 2015).

B&W's revenues, resulting in higher rates to customers. Therefore, the panel concluded that the proper throughput for Navitas's current customers should be based on Navitas's test period transportation throughput provided by B&W, rather than the sales volumes provided by Navitas. Further, the record supports B&W as the source for best determining the throughput for B&W's affiliates that will occur during the attrition period ending December 31, 2016. Likewise, Navitas is the best judge of anticipated throughput for Navitas's two additional customers. Therefore, the panel adopted transportation throughput for Navitas's current customer base of 60,411 Mcfs, B&W's estimated affiliate throughput of 47,450 Mcfs, and Navitas estimated throughput of 120,000 Mcfs for the two additional customers. This determination results in a total of 227,861 Mcfs and revenues of \$136,717 for the twelve months ending December 31, 2016.

**B. Allocation of Operator Fees from Enrema to the regulated operations of B&W – Operations and Maintenance Expense**

B&W has no employees of its own. Rather, Enrema (an affiliate of B&W) provides administrative and management functions for which it allocates an operator fee "that is proportionate with the time and resources devoted to conducting these activities."<sup>26</sup> B&W advocates an allocation of 50/50 between regulated and non-regulated operations of B&W.<sup>27</sup>

Navitas expressed concern with the \$273,000 allocation to B&W from Enrema and the retention of 50% of this allocation by B&W, which focused on the basis of the allocation and that it does not result in B&W subsidizing its affiliates.<sup>28</sup>

The Consumer Advocate's witness, Mr. Smith, asserted the 2011 contract between Enrema and B&W outlining the allocation methodology is no longer applicable based on B&W's

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<sup>26</sup> *Id.* at 27-28.

<sup>27</sup> *Id.* at 36.

<sup>28</sup> Pre-Filed Testimony of Thomas Hartline, p. 3 (August 11, 2015).

response to discovery requests indicating portions of the agreement are no longer in effect.<sup>29</sup> Additionally, Mr. Smith testified that B&W was acquired by FIR Energy investing \$5.7 million in B&W with funds from MI Energy and, in turn, MI Energy investing \$16 million in larger gas and oil projects in Tennessee. Therefore, Mr. Smith asserts that an allocation of something less than 50% of the \$273,000 allocation would be more appropriate. He calculates the regulated portion of the operator fee as 20% (\$54,600) of the allocation from Enrema.<sup>30</sup> Mr. Smith points out that the majority of revenue and net margins have come from B&W's oil and gas operations rather than from Navitas for gas transportation service.<sup>31</sup> The Consumer Advocate did not provide any numerical calculation or any other documentation to support a 20% allocation factor, but instead listed reasons for adopting less than 50% allocation of the operator fee.

The Company proposes that operating fees should be allocated 50/50 between B&W's regulated and unregulated businesses providing that this allocation percentage is proportionate with the time and resources devoted to conducting these activities. B&W is invoiced monthly for \$22,750 by Enrema for operating fees and allocates \$11,375 to the pipeline. In rebuttal pre-filed testimony, Mr. Novak submitted a schedule listing the components and allocation factors determining the \$11,375 operating fee that is assigned to the pipeline. Mr. Novak asserts the labor and benefit costs are allocated to the utility based on each individual's estimated time spent on the utility's business.

While the Company provided invoices from Enrema to B&W, the Company never provided any other documentation to demonstrate what makes up the amount on the invoices. Information and supporting evidence for allocation factors for each expense was requested; however, the Company did not provide time cards, work orders, pay stubs or any other evidence to support the allocation factors that it used in deriving the pipeline's monthly operating fee. The

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<sup>29</sup> Pre-Filed Direct Testimony of Ralph C. Smith, p. 21 (August 11, 2015).

<sup>30</sup> *Id.* at 21-22.

<sup>31</sup> Pre-Filed Supplemental Direct Testimony of Ralph C. Smith, p. 22 (August 24, 2015).

Company's support for the allocation percentages was that the factors were based on each employee's estimation of time spent on regulated utility business.

Upon consideration, the panel finds that it is reasonable to determine that allocation factors supported by some evidence are more appropriate than relying simply on an individual party's opinions and judgment. The Company provided a schedule listing the components that make up operating fees and the allocation factors for assigning the components to the pipeline. The Company allocated the labor and benefit costs based on estimated time spent on the utility's business. The Consumer Advocate relied on its professional judgment and opinions to arrive at its allocation factors. While salary and wage rates, time reports or other documentation could have further supported the amount of labor and benefits allocated to the pipeline, the panel concludes that the Company's estimate is, at this time and under the circumstances of this case, the best supported estimate in the record.

Therefore, the panel voted to set the allocation factor for operating fees at 50%, resulting in Operating Fees of \$136,500 annually. The panel cautioned the Company that in future cases it should file allocation factors with more supportive documentation, rather than relying solely on employee's judgments. Absent such additional support, the panel noted that future requests for recovery of operator fees may be disallowed.

### **C. Rate Base**

The primary contested issue concerning rate base centered on whether to allow the inclusion of B&W's acquisition cost of \$2,633,085 in rate base calculations, as proposed by the Company. B&W acquired the pipeline and ninety six (96) oil and natural gas wells for \$2,633,085 from Gasco's bankruptcy proceeding in 2010. The Company had no records for the net book value of the pipeline, but rather recorded the acquisition price as plant in service.<sup>32</sup>

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<sup>32</sup> Transcript of Hearing, p. 115 (September 14, 2015).

According to the Company, because the seller would not sever the pipeline from the wells, B&W had to take the wells in order to get the pipeline; therefore B&W assigned none of the acquisition cost to the wells. B&W estimated the value of the producing wells to be \$60,943 and the net liability of capping the inactive wells to be \$29,845.<sup>33</sup>

Mr. Ramon testified that when Enrema acquired the pipeline it was not buying a company, but instead was buying an asset that had the potential to work in conjunction with the existing plan of developing gas and oil.<sup>34</sup> Mr. Ramon testified that while reversing the flow on the pipeline (to flow gas produced by B&W affiliates back to Spectra for sale on the open market) was not an objective at the time of purchase, it was an alternative.<sup>35</sup> B&W believes it made a good business decision in purchasing the pipeline for \$2.6 million because it is less than the cost to build one.<sup>36</sup> Mr. Ramon further testified that the Company became aware after the purchase that approximately 40 to 50 of the wells had already been plugged or handed over to the landowners. Further, only thirteen (13) of the wells are currently producing oil or gas.<sup>37</sup>

In addition, the Company supported its acquisition cost with an independent analysis performed by Bell Engineering.<sup>38</sup> The Bell analysis estimates the 2013 replacement cost of the pipeline to be \$12,885,858 and the undepreciated costs are \$6,559,308, which far exceeds the acquisition cost included in rate base. Even if this amount is depreciated back to the pipeline's construction date, its replacement value still exceeds the amount included in rate base.<sup>39</sup> Although the analysis is based upon a 2013 replacement value, Mr. Novak argues that even if one discounts this undepreciated market value by 3% back to the construction date, the

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<sup>33</sup> Pre-Filed Rebuttal Testimony of William H. Novak, pp. 2-4 (August 17, 2015).

<sup>34</sup> Transcript of Hearing, pp. 46-47 (September 14, 2015).

<sup>35</sup> *Id.* at 43-44.

<sup>36</sup> *Id.* at 53.

<sup>37</sup> *Id.* at 60-61.

<sup>38</sup> Pre-Filed Rebuttal Testimony of William H. Novak, WHN Rebuttal-2 (August 17, 2015).

<sup>39</sup> *Id.*

discounted replacement cost value to construction date of \$2,863,070 exceeds the acquisition cost utilized by the Company in this case.<sup>40</sup>

Navitas noted that 100% of the purchase price is attributed in B&W's rate case to the pipeline although other assets, including wells, were included in the transaction. Mr. Hartline asserts that there is no sound economic basis for spending \$2 million on a pipeline that earns \$20,000 annually.<sup>41</sup> Therefore, a substantial portion of the purchase price is and should be attributed to the other assets purchased in the transaction.<sup>42</sup> Mr. Hartline testified that the Bell Engineering report was an inappropriate basis to support inclusion of the acquisition costs as replacing the pipeline today would be uneconomic in the rural area the pipeline services.<sup>43</sup>

In the pre-filed testimony of Mr. Smith, the Consumer Advocate proposed to exclude from Plant in Service the pipeline purchase cost and, instead, treat it as an Acquisition Adjustment because B&W failed to provide reliable information on the original cost of the pipeline.<sup>44</sup> Mr. Smith explains that any amount paid for utility plant in excess of the utility's original costs are referred to as "Goodwill" or Acquisition Premium, and not allowed recovery in rates because it is not used or useful in the provision of utility service. Disallowance of Goodwill or Acquisition Premium discourages companies from marking up the cost of assets used to provide utility service through the transfer or selling to different owners. Mr. Smith states that B&W was unable to provide the original cost, and the pipeline cost was not available from the books of Gasco (the seller) or the property tax information on file for Gasco. He determined from the responses to data requests that B&W did acquire 96 oil and gas wells along with the pipeline and that B&W determined the net value of these wells to be a negative \$29,845

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<sup>40</sup> *Id.* at 4.

<sup>41</sup> Pre-Filed Testimony of Thomas Hartline, p. 3 (August 11, 2015).

<sup>42</sup> *Id.*

<sup>43</sup> Transcript of Hearing, p. 170 (September 14, 2015).

<sup>44</sup> Pre-filed Testimony of Ralph C. Smith, pp. 18-19 (August 11, 2015).

due to the cost of capping inactive wells. Therefore, none of purchase price was assigned by B&W to the wells.

From B&W's 2012 trial balance, Mr. Smith ascertained that there was a gross profit of \$182,582, which included \$19,729 for gas transportation and \$162,853 from oil and gas sales and royalties. Thus, according to Mr. Smith, of the revenues generated by the pipeline, 11% were from transportation service and 89% from oil and gas sales and royalties. The wells in question have since been transferred to a B&W affiliate, Rugby Energy, LLC, and are operated by another affiliate, Enrema, which is the same affiliate charging B&W an annual operator fee. Because of the gross profit in 2012 and the transfer taking place between two affiliates with the same ownership, Mr. Smith questions the lack of compensation for the wells. For these reasons, the Consumer Advocate removed the acquisition amount of \$2,597,285 from Plant in Service and left only the \$437,715<sup>45</sup> as the cost of the pipeline. This represents the amount spent by B&W for safety improvements after B&W acquired the pipeline.<sup>46</sup> Removing this amount from Plant in Service results in a reduction of the attrition year mid-point accumulated depreciation by \$568,367 for a total rate base reduction of \$2,028,918 related to the cost of the pipeline.

In response to data requests from Authority Staff, Navitas provided records from the previous owner of the pipeline, including a 2008 tax return.<sup>47</sup> During the hearing, Mr. Smith addressed the 2008 federal income tax return, stating that the reported pipeline assets at the end of 2008 were \$854,926 as plant – depreciable assets. The tax return reported accumulated depreciation of \$703,017 as of December 31<sup>st</sup>, 2008 and a land asset reported in the amount of \$68,538. The reported tax year depreciation was \$22,564, which is representative of a depreciable life of approximately 38 to 40 years; reasonable for a gas pipeline. Mr. Smith points out the return was prepared by a CPA and signed by an officer of the Company and as such,

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<sup>45</sup> B&W Data Response to CAPD 1-5 (June 18, 2015).

<sup>46</sup> Pre-Filed Direct Testimony of Ralph C. Smith, pp. 9-19 (August 11, 2015).

<sup>47</sup> Navitas Response to TRA Data Requests of August 24, 2015, Exhibit A (September 8, 2016).

appeared to be the most reasonable and reliable information available on the value of the pipeline.<sup>48</sup>

With respect to Gasco's 2008 tax return, Mr. Novak responded that the affiliate IRS PBA code listed is for mineral extraction. Therefore the return is not really applicable in this case because it does not represent a value for the pipeline. Rather it represents a value for the oil and gas wells.<sup>49</sup> Mr. Smith was cross-examined regarding the IRS PBA codes noted by Mr. Novak. Mr. Smith noted that Schedule L of the return lists these as depletable assets, and a pipeline or building should be classified as depreciable assets. Therefore, the tax return is applicable and if one carries the amount out through the midpoint of the attrition year, it would be almost zero (\$17,182) as the Consumer Advocate proposed. Mr. Smith agrees that either zero or \$17,182 would be an acceptable cost of the pipeline at the midpoint of the 2016 attrition year.<sup>50</sup>

Mr. Novak asserts that the Consumer Advocate has ignored the data provided by the Company and the State of Tennessee's tax assessment of the pipeline when he disallows the acquisition cost of the pipeline in his analysis. The tax assessment relied upon by the Company reported to the State of Tennessee as the cost of the pipeline in exact and equal amounts in each county the pipeline operates within, which Mr. Smith questions. Mr. Smith points out that the previous owner had a total assessment of \$756,000, with \$976 assessed in Fentress County, \$227,660 in Pickett County and the remainder in Campbell County, including Jellico.<sup>51</sup> Mr. Smith notes that the tax assessment is prepared by the Company and requires information regarding B&W's last rate case. In sum, the Consumer Advocate contends that the tax assessment relied upon by the Company is an unreasonable basis to support the inclusion of the acquisition price in rate base.

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<sup>48</sup> Transcript of Hearing, pp. 119-121 (September 14, 2015).

<sup>49</sup> *Id.* at 71-73.

<sup>50</sup> *Id.* at 122-128.

<sup>51</sup> Supplemental Direct Testimony of Ralph C. Smith, pp. 17-18 (August 24, 2015).



According to Mr. Novak, if Mr. Smith's directive for "burden of proof" were adopted, B&W would have never purchased the pipeline out of bankruptcy since there were no cost records available.<sup>52</sup> Mr. Novak refers to FERC instructions for recording utility plant in which it states that an estimate of the original cost can be used to determine the cost basis of the plant. He states that it is B&W's best estimate that the pipeline cost is \$2,633,085.<sup>53</sup>

During the hearing, the Company acknowledged that there is "no clear evidence of what rate base ought to be" and that rate base at this point is a question of policy and fairness.<sup>54</sup> There is no persuasive evidence that suggests that including the entire purchase price is in the public interest. Under the circumstances of this case, the most reasonable determination is based upon information that is related to the actual cost of the plant when it was constructed. Based on the evidence in the proceeding, the panel finds that including the pipeline at the original cost, rather than the acquisition cost, is the solution that is most fair to both customers and B&W.

The panel further finds that the 2008 tax return of Gasco Distribution Systems, Inc. and Subsidiaries provides the most sound support for the prior owner's original cost and the value of the pipeline at the time of acquisition. Therefore, the panel concludes that B&W's Plant in Service include \$923,364 as the original cost of the pipeline, which includes the prior owner's original cost of plant of \$854,826 and land of \$68,538. Further, including \$923,364 as the original cost of the pipeline, along with \$437,715 of uncontested additions since B&W's acquisition, as well as uncontested land, structures and intangible property of \$119,842, results in total Plant in Service of \$1,480,921. Finally, the panel further adopts Accumulated Depreciation of \$919,975 which includes accumulated depreciation of \$854,826 related to the original pipeline acquired by B&W and \$65,149 of accumulated depreciation related to the new additions.

#### **D. CCN Costs & Rate Case Expense**

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<sup>52</sup> Pre-Filed Rebuttal Testimony of William H. Novak, p. 6 (August 17, 2015).

<sup>53</sup> *Id.* at 5.

<sup>54</sup> Transcript of Hearing, pp. 183-184 (September 14, 2015).

The Company included \$74,383 of costs associated with obtaining a CCN as part of the Company's \$86,383 total Professional Services Expense, which are included in Operation & Maintenance Expense.

Mr. Smith testified that the majority of the legal and professional fees included in the operating expenses of the Company were primarily related to B&W obtaining its CCN. Therefore, these costs benefit more than one period and should be capitalized and amortized over a period of time. For this reason, Mr. Smith proposed the \$74,383 be capitalized and amortized over a 20 year period. This reduces operating expenses for the attrition period by \$70,664 and increases rate base by the unamortized amount of \$68,959.<sup>55</sup> The Consumer Advocate further states that the test year expenses will not be incurred annually by B&W and should be removed from the test period expense and amortized over an appropriate period, such as the period benefitted by the CCN or the useful life of the CCN.

Mr. Smith asserts that the useful life could be viewed as the period that B&W would be providing gas pipeline transportation service. The depreciation rate B&W is using suggests a life for the pipeline of 30 years, and a case could be made for amortizing the CCN over the same term. Mr. Smith contends that the CCN has a benefit to the Company beyond that of a rate case filing cycle, but provides no support for amortizing such costs for 20 years other than his professional judgment.<sup>56</sup>

Mr. Novak states that the Company recognized the entire balance as an expense because deferring the expenses first requires approval from the Authority, which was not received. Mr. Novak testifies that the Company does not object to capitalizing and deferring the CCN costs if the TRA approves this; however, the Company objects to the 20 year recovery period proposed

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<sup>55</sup> Pre-Filed Direct Testimony of Ralph C. Smith, pp. 22-23 (August 11, 2015).

<sup>56</sup> Pre-Filed Supplemental Direct Testimony of Ralph C. Smith, pp. 22-24 (August 24, 2015).

by Mr. Smith. Mr. Novak states that there is no analysis supporting the 20 year period, the costs are the same type incurred in the preparation of a rate case, and the costs should be amortized over a period no longer than 60 months.<sup>57</sup>

Upon consideration, the panel finds that the CCN is effective during the life of the Company, and the costs associated with obtaining the CCN are incurred one time and are non-repetitive. Nonrecurring CCN costs provide a benefit beyond the year of incurrence and for a public utility expenses for CCN proceedings are not recurring annual expenses. For this reason, CCN costs are not normally expensed in the year of incurrence, but rather are deferred and recovered over a specified period of time. Additionally, allowing CCN costs to be included in the test year O&M expenses would effectively allow the Company to continue to recover these costs year after year until such time as another rate case occurs. Therefore, the panel finds that inclusion of the total CCN costs in O&M expenses is unreasonable and that they should be removed from O&M expenses.

Generally, deferral of CCN costs are authorized by the Authority only after a company requests such treatment and is granted permission to do so. Although B&W did not ask for deferral of its CCN costs at the time it obtained its CCN, no party is opposed to establishing a deferral account at this time with amortization over a specified period of time. The circumstances in this rate case are unique. Until recently B&W has not been under this Authority's regulation and this is B&W's first rate case filing with the Authority. The Company has limited experience managing a regulated utility and appears to have been unaware that the Company should request that CCN costs be deferred for recovery in future periods. Further, disallowing the deferral of these costs could cause a financial burden under the circumstances of this case.

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<sup>57</sup> Pre-Filed Supplemental Rebuttal Testimony of William H. Novak, p. 13 (September 3, 2015).

Therefore, the panel concludes that the costs related to B&W obtaining a CCN are similar to the type of expenses incurred when preparing for a general rate case and should be amortized over the same period as Rate Case Expense, which the Company and Consumer Advocate have proposed for recovery over a five (5) year period. Rate Case Expense, however, should optimally be amortized over the period between Rate Cases. Since there is no history from which to estimate the frequency of the Company's rate filings, the panel concludes that the Rate Case Expense should be amortized over three years. The annual Rate Case Expense will be \$20,000. Likewise, the CCN costs should be amortized over three years. For these reasons, the panel approved the removal of \$74,383 associated with obtaining the Company's CCN from expenses; such costs are deferred and recovered through rates over the same time period as the Company's deferred rate case expense, i.e., three years. Allocating the Company's \$74,383 of CCN costs over 3 years results in annual expense of \$24,794. Accounting for the CCN costs in this manner results in the average deferred CCN balance of \$61,986 being included in B&W's rate base for the attrition period. Further, the Deferred Rate Case Expense included in Rate Base will be \$50,000.

#### **F. Operating Expenses**

As discussed previously herein, B&W's operating expenses were adjusted by reducing the Professional Services expenses by the CCN costs which were placed in calculations of the Company's rate base. One year of amortized CCN costs and depreciation expense were restated to reflect the panel's decision regarding plant in service and the three year amortization of CCN and Rate Case Expense.

In addition, the panel concludes that is reasonable to remove bank fees incurred by the Company for overdrafts, totalling \$36, from B&W's operating expenses in the attrition year.<sup>58</sup>

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<sup>58</sup> B&W Response to TRA Staff Data Request #2, Q. 10 (September 3, 2015).

Further, the panel concludes it is reasonable for B&W's expense of Taxes Other Than Income be reduced for taxes that were not attributable to the activities of the regulated pipeline.<sup>59</sup> Therefore, the panel adopts Operating Expenses of \$223,635.

### **G. Rate of Return**

The Company proposed a capital structure of 100% equity and a return on equity of 10.12% based on an average of the return on equity approved by the Authority for Atmos Energy Corporation, Chattanooga Gas Company and Piedmont Natural Gas Company.<sup>60</sup> Regarding cost of capital, the Consumer Advocate presented the pre-filed testimony of Dr. Christopher Klein, recommending an 8.5% overall return with that return consisting entirely of an equity return.<sup>61</sup> Dr. Klein's pre-filed testimony asserts that the overall cost of capital should be set to provide a return on debt and stock comparable to alternative investments of similar risk. He concurs that B&W is 100% equity financed, and therefore, the only debt consists of intercompany no-interest loans.

Although B&W contested Dr. Klein's proposed rate of return through the pre-filed rebuttal testimony of Mr. Novak, at the hearing the Company determined it would not cross examine Dr. Klein and that the Company would accept an 8.5% overall rate of return.<sup>62</sup> Based on the agreement of the parties, the panel voted to adopt an 8.5% overall return on rate base as the Company's authorized rate of return and finds the 8.5% overall return to be within the zone of reasonableness in this particular case.

### **H. Revenue Deficiency**

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<sup>59</sup> *Id.*, Q. 11-12 (September 3, 2015).

<sup>60</sup> Pre-filed Direct Testimony of Hal Novak, p. 8; Schedule 6 (April 2, 2015).

<sup>61</sup> Pre-Filed Direct Testimony of Christopher C. Klein, Ph.D., p. 5 (August 11, 2015).

<sup>62</sup> Transcript of Hearing, p. 12 (September 14, 2015).

The panel's previous findings and conclusions results in a revenue deficiency for the twelve months ending December 31, 2016 of \$144,118.

### **I. Rate Design**

Using its calculated attrition period revenue deficiency and proposed rate of return, B&W proposes a rate design equivalent to the revenue generated from a rate increase of \$3.00 from the current \$.60 Mcf rate to \$3.69 Mcf.<sup>63</sup> Based on the Consumer Advocate's calculated revenue deficiency of \$37,651 and a total revenue requirement of \$165,228, Mr. Smith recommends a monthly fixed charge of \$5,000 for Navitas and \$1,440 for B&W's affiliated customers. Then using estimated throughput of 212,628 Mcf for calculating the volumetric rate, the Consumer Advocate asserted that the rate should be set at \$.41 Mcf.<sup>64</sup>

The Company opposes the proposed adjustments of the Consumer Advocate and request to increase revenues by \$525,648 for a total revenue requirement of \$627,565. Due to the disagreement between the parties on throughput and usage and because these factors have a material impact on earnings, Mr. Novak recommended that the Authority adopt a Sales Adjustment Mechanism ("SAM"). The SAM methodology trues up actual sales volumes to those adopted by the Authority. Any over or under recovery is refunded or surcharged to the customers over the next twelve month period.<sup>65</sup>

To initiate this proposal, Mr. Novak suggested the Authority adopt a daily demand rate structure. Under this methodology, the total revenue requirement of \$627,565 is divided by 365 days to determine a daily billing rate of \$1,719. This daily billing rate is allocated to B&W's two customers based on their previous years' usage with only the allocation recalculated each year (the daily rate would remain constant until the next rate case). Based on the throughput forecast of 210,235 Mcf with Navitas transporting 180,411 Mcf, Navitas would be allocated 86%

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<sup>63</sup> *Id.* at 94.

<sup>64</sup> Pre-Filed Direct Testimony of Ralph C. Smith, pp. 24-25 (August 11, 2015).

<sup>65</sup> Pre-Filed Rebuttal Testimony of William H. Novak, pp. 19-20 (August 17, 2015).

of the billing rate (\$1,571), and B&W's pipeline affiliates would be allocated 14% (\$240).<sup>66</sup> Mr. Novak stated that B&W does not know how the proposed rate design would affect individual customers because they do not have the volumes for each of these customers. He does believe that the information is available for this calculation from reports on file with the Authority.<sup>67</sup>

Mr. Hartline testified the rate increase sought by B&W will harm Navitas and its customers and could result in making the end user rates uncompetitive with alternative energy sources.<sup>68</sup> He cites, as an example, the largest customer of Navitas currently pays \$0.92 per ccf which includes gas cost and the current \$0.06 per ccf rate of B&W. This customer has secured a propane contract for approximately \$1.08 per ccf. Mr. Hartline testified that a simple math calculation demonstrates that any rate increase above \$0.16 per ccf or \$1.60 per Mcf (\$1.08 less \$0.92) will result in Navitas being unable to compete with the propane alternative.<sup>69</sup>

The Consumer Advocate expressed its concern regarding the proposed rate increase of B&W and the potential rate shock to customers. Mr. Smith reiterates Mr. Hartline's concerns regarding the loss of a customer to propane use if such an increase is granted. In the alternative, Mr. Smith proposes to recover the Consumer Advocate's projected revenue requirement of \$154,776 (deficiency of \$27,199 and current revenue of \$127,577), through a combination of fixed and volumetric charges. The Consumer Advocate proposes a fixed charge of \$5,000 for Navitas and \$1,440 for B&W affiliates, producing annual revenue of \$77,280. The remaining \$77,496 should be recovered through a \$0.36 volumetric rate.<sup>70</sup>

The panel did not adopt the rates or rate design proposals of either B&W or the other intervening parties. B&W supplies a small amount of gas and it is preferable to design rates where revenues remain relatively constant and shortfalls of revenues due to the volatility of gas

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<sup>66</sup> *Id.* at 20-21.

<sup>67</sup> Transcript of Hearing, p. 103 (September 14, 2015).

<sup>68</sup> Pre-Filed Testimony of Thomas Hartline, p. 2 (August 11, 2015).

<sup>69</sup> *Id.* at 4.

<sup>70</sup> Pre-Filed Direct Testimony of Ralph C. Smith, pp. 24-25 (August 11, 2015).

usage are minimized. Just and reasonable rates should give the utility the opportunity to achieve the rate of return set by the Authority.<sup>71</sup> Under the specific circumstances of this case, designing rates whereby the majority of revenues are generated from a fixed charge would best accomplish these goals.

For these reasons, the panel adopts a rate design comprised of a fixed monthly charge of \$13,897 to Navitas and a fixed monthly charge of \$3,655 to B&W's other customer, affiliate Rugby Energy, LLC. In addition, the panel adopts a volumetric charge of \$0.3081 per Mcf from all customers going forward. The adoption of this rate design results in an effective rate per Mcf of \$1.23248.

The rate design adopted by the panel is based upon the entire throughput of volumes transported to Navitas, which includes the volumes sold to Kentucky customers. Though the rate design is based on total throughput volumes for both Tennessee and Kentucky, the Authority's jurisdiction applies only to the gas that is delivered to Navitas that is consumed within the borders of Tennessee. Thus, the volumetric rates set here shall apply only to the gas transported by B&W that is consumed in Tennessee. It is the intent of the Authority, with respect to this decision setting rates, that FERC review, consider and grant B&W's timely application for an Order No. 63 certificate, authorizing the use of the rate set in this Order for all gas transported on B&W's pipeline, whether ultimately consumed in Tennessee or Kentucky.

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<sup>71</sup> See *Bluefield Water Works and Improvement Company v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 43 S.Ct. 675 (1923).



### **SUMMARY OF FINDINGS AND CONCLUSIONS**

After the Hearing on December 14, 2015, the panel considered the *Petition*. The panel denied the *Petition* of B&W Pipeline, LLC and set new rates based on the following:

1. A historic Test Period of the twelve-months ended December 31, 2014;
2. An Attrition Period of the twelve months ended December 31, 2016;
3. Plant in service of \$1,480,921 with accumulated depreciation of \$919,975;
4. Rate Base of \$672,932, including amortized rate case and CCN expense for a three year period;
5. A rate of return of 8.50%;
6. Operation Expense of 223,635;
7. Revenues of \$136,717;
8. A revenue deficiency of \$114,118 at the end of the Attrition Period;
9. A rate design consisting of a fixed monthly charge of \$13,897 from Navitas TN NG, LLC and a fixed monthly charge of \$3,655 from Ruby Energy, LLC resulting in revenues of \$210,624. In addition, the Authority set a volumetric charge of \$0.30813 per Mcf from all customers.
10. B&W Pipeline, LLC shall provide a copy of this Order to the Federal Energy Regulatory Commission in the Company's application for a blanket certificate pursuant to 18 C.F.R. § 284.224.
11. The Company shall file tariffs accurately reflecting this decision with an effective date of January 1, 2016.
12. 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.

13. 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, Vice Chairman David F. Jones and Director Robin Morrison concur.**

**ATTEST:**



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**Earl R. Taylor, Executive Director**

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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)  
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DOCKET NO.  
15-00042

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

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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.<sup>1</sup> 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

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<sup>1</sup> *Corrected Company Exhibits*, Schedule 1 (May 22, 2015).

deficiency of \$144,118.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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

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<sup>2</sup> *Final Order Setting Rates*, p. 20 (March 10, 2016).

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

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

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

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

<sup>7</sup> *Id.* at 6.

<sup>8</sup> *Id.* at 4.

based on the throughput data for the first quarter of 2016.<sup>9</sup> 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.<sup>10</sup>

#### **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.<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup> 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.

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<sup>9</sup> *Id.* at 6.

<sup>10</sup> *Id.* at 6-7.

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

<sup>12</sup> *Id.*

<sup>13</sup> *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.<sup>14</sup> 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

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<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup> The record indicates the Company considered the value of the pipeline for purposes of rate base as a central issue for the hearing.<sup>17</sup> 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

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<sup>15</sup> Transcript of Hearing, pp. 183-184 (September 14, 2015).

<sup>16</sup> Tenn. Code Ann. § 65-5-103(a).

<sup>17</sup> Transcript of Hearing, p. 12 (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.<sup>18</sup> 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

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<sup>18</sup> *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:**



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**Earl R. Taylor, Executive Director**

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**August 4, 2016**

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

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**FINAL ORDER DENYING  
THE PETITION FOR RECONSIDERATION**

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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.<sup>1</sup> 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

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<sup>1</sup> William H. Novak, Pre-filed Direct Testimony, p. 9 (April 2, 2015).

deficiency of \$144,118.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> The panel granted in part and denied in part the *Petition for Reconsideration*.<sup>5</sup> 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.<sup>6</sup> A briefing schedule was established by the Hearing Officer in anticipation of deliberations by the hearing panel on June 20, 2016.<sup>7</sup> 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

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<sup>2</sup> *Final Order Setting Rates*, p. 20 (March 10, 2016).

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

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

<sup>5</sup> *Order Granting in Part, and Denying in Part, the Petition for Reconsideration*, pp. 4-7 (May 16, 2016).

<sup>6</sup> *Id.* at 5.

<sup>7</sup> *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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

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

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

<sup>9</sup> *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*.

<sup>10</sup> *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*.

<sup>11</sup> *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.<sup>12</sup>

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.<sup>13</sup> 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.”<sup>14</sup>

#### **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.<sup>15</sup> 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.<sup>16</sup> 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

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<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Id.* at 4-5.

<sup>14</sup> *Id.* at 5.

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

<sup>16</sup> *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:**



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**Earl R. Taylor, Executive Director**

**EXHIBIT D**

**Notice of Application**

Attached.



**EXHIBIT E**

**Intrastate rates and operating conditions of B&W Pipeline, Inc.  
as approved by the Tennessee Regulatory Authority**

Attached.

# **B&W PIPELINE**

**10025 INVESTMENT DRIVE, SUITE 160  
KNOXVILLE, TENNESSEE 37932**

**TRA NO. 2  
RULES AND REGULATIONS**



**APPLICABILITY**

These rules and regulations are applicable to the Customers serviced by B&W Pipeline (Company) within its certificated service territory in Tennessee.

**DEFINITIONS**

Applicant	means any person who has made application to the Company for transportation service.
Authority	means the Tennessee Regulatory Authority.
Business Day	means any day from Monday through Friday inclusive, excluding any holiday observed by the Company.
Company	means B&W Pipeline.
Customer	means an individual, firm, or organization that purchases transportation service at one location.
Daily Contract Entitlement	means the maximum daily transportation capacity allocation to each customer expressed in MCF per day, based on their proportional annual usage and fixed Customer Base Use Charge in accordance with the terms set forth by the TRA Order in Docket 15-00042
Delivery Point	means the point(s) at which gas leaves a transporter's system completing the transportation service transaction between the Company and the transportation service Customer.
Delivery Point Operator	the Company will solely manage and control the facilities and the gas moving through those facilities at the Delivery Point.
Fixed Charge	means the non-variable portion of the Company's rates that are charged to the Company's Customers. Currently, the TRA has set the total annual Fixed Charge revenues for the current customers at \$210,624 or \$17,552 per month and allocated to the Company's customers in accordance with the terms of the TRA Order in Docket 15-00042.
Gas or Natural Gas	means any mixture of hydrocarbons or of hydrocarbons and noncombustible gases in a gaseous state, consisting predominantly of methane.

**DEFINITIONS (Continued)**

Gas Transportation Service	means the service of transporting natural gas through the Company's mains from the receipt point(s) to the Customer's delivery point(s).
Imbalance	means the difference between the volumes of Gas received on behalf of a Customer and the volumes of Gas delivered by the Company to said Customer after adjusting for shrinkage.
Main	means the Company's gas pipeline used to offer Gas Transportation Service.
MCF	means thousand cubic feet in standard conditions.
Month	means the period beginning on the first Day of a calendar month and ending on the beginning of the first Day of the next succeeding calendar month.
Tariff	means all Rate Schedules, Terms of Service, and Rules and Regulations approved by the Authority relative to Gas Transportation Service provided by the Company.
Receipt Points	means the natural gas intake points to which the providers deliver gas into the company's mains for transportation to the delivery point (s)
Service	means Gas Transportation Service.
Service Line	means the customer's gas line laid downstream from the delivery point. All service lines are the Customers' sole responsibility.
Volumetric Charge	means the variable throughput portion of the Company's rates that are charged to the Company's Customers at \$0.3081 per Mcf * Current Monthly Transportation Volumes.

**APPLICATION FOR SERVICE**

The Company upon application for service and the acceptance thereof by the Company will render Service to qualified customers. No Gas Provider may deliver gas to the Company's mains without having previously been authorized by the Company to do so.

**DELIVERY POINTS**

The Company must previously approve each Delivery Point proposed by the Customer before it can begin service. The Company may at its sole discretion disconnect any Delivery Points that does not meet its quality and safety specifications.

**RECEIPT POINTS**

The Company must previously approve each Receipt Point proposed by the Customer before it can begin service. The Company may at its sole discretion disconnect any Receipt Points that does not meet its quality and safety specifications.

**TERM**

Service taken under this rate shall be by contract for a term of one (1) year. Once a qualified Customer elects service under this Rate Schedule, all service will be provided under the terms and conditions of this Rate Schedule for a term extending through December 31<sup>st</sup>.

If the parties are unable to agree on the terms and conditions of a new agreement, the current Agreement will remain in effect until the effective date of a new final order of the Tennessee Regulatory Authority changing the rates, terms, or conditions of this Agreement.

**EARLY TERMINATION OF GAS TRANSPORTATION SERVICE**

Gas Transportation Service may be terminated:

- (1) By the Customer:  
A Customer may elect to discontinue service for the following year under this Rate Schedule by giving written notice to the Company by September 1<sup>st</sup> of ongoing year. Upon proper notice, the Customer's service shall be discontinued effective December 31<sup>st</sup> of the ongoing year.
- (2) By the Company:  
Service may be refused or discontinued for any of the reasons listed below. Unless otherwise stated, the Company shall comply with the notice requirements before service is discontinued. However, no service shall be discontinued on the day or a date preceding a day or days on which the services of the Company are not available to the general public for the purpose of reconnecting the discontinued service or during any 24-hour period, as measured from 8:00am on the planned date of termination, where the forecasted low temperature, as determined by the National Weather Service, is 32 degrees Fahrenheit or below, except as provided in (a), (b), (c) and (d) below:
  - a. Without notice in the event of a condition determined by the Company to be hazardous.

- b. Without notice in the event of Customer use of equipment in such a manner as to adversely affect the Company's equipment or the Company's service to others.
- c. Without notice if there is evidence of tampering with the equipment furnished and owned by the Company
- d. Without notice if there is evidence of unauthorized use.
- e. For violation of and/or non-compliance with the Company's rules on file with and approved by the Authority.
- f. For failure of the Customer to fulfill his contractual obligations for service and/or facilities subject to regulations by the Authority.
- g. For failure of the Customer to permit the Company reasonable access to its equipment.
- h. For non-payment of delinquent account.

Gas Transportation Service to any gas Customer may not be terminated by the Company without reasonable prior notice where required and the Customer being given reasonable opportunity to dispute the reasons for such termination.

Termination of Gas Transportation Service by either Customer or Company shall not relieve Customer from the obligation to pay Company for services rendered prior to the effective date of such termination.

#### **APPARATUS-EASEMENTS**

Customer's Lines: All lines and equipment except the Company's meters and accessories on the Customer's side of delivery point, necessary to utilize service furnished by the Company, must be installed and maintained by and at the expense of the Customer. The Customer's lines shall terminate at the point of delivery, in a manner satisfactory to the Company, for connection with the Company's lines or apparatus.

#### **COMPANY PROPERTY**

All apparatus, instruments, meters and materials supplied at the expense of the Company shall remain its property, and any other property installed at the expense of the Company, shall belong to the Company.

#### **INSPECTION BY COMPANY**

The Company is willing to assist the Customer by advice as to the installation of the Customer's apparatus and to examine the Customer's installation, and may refuse to make connection or to commence or continue service whenever such installation is not in proper condition; but no inspection by the Company, nor any failure by it to object to the Customers' installation, shall render the Company in any way liable for any damage or injury resulting from any defective installation made by the Customer.

#### **RIGHT OF WAY**

The Customer shall make or procure satisfactory conveyance to the Company of right of way for the Company's lines and apparatus across and upon the property owned and controlled by the Customer, necessary or incidental to the furnishing of service.

#### **TESTS AND ADJUSTMENTS**

The Company, at any time upon the request of the Customers, will test the meter of such Customer within five days after receipt of such request, provided the Customer will accept the result of such test as a basis for the settlement of the Customer's account. If any such test shall show the average error of the meter to

be less than 2%, the Customer shall pay the expense of the test; except that where the meter has not been tested at the request of the Customer within five (5) year period immediately preceding such request, the test will be made without charge to the Customer. The Company may at any time at its own expense test any of its meters. If on test of a Customer's meter, either by the Company or by the Authority, such meter shall be found to have a percentage of error greater than 2%, the following provisions for the adjustment of bill shall be observed.

**Fast Meters:** When a meter is found to be fast in excess of 2%, the Company shall refund to the Customer an amount equal to the excess charged for the gas incorrectly metered. The period over which the correction is to be made shall be the time elapsed since the last previous test, provided, however, the period shall not exceed six (6) months. No part of the Customer Base Use Charge shall be refunded.

**Slow Meters:** When a meter is found to be slow in excess of 2%, the Company may make a charge to the Customer for the gas incorrectly metered. The period over which the correction is to be computed shall be the time elapsed since the last previous test, provided, however, the period shall not exceed six (6) months.

**Failure to Register:** If a meter is found not to register for any period, the Company will estimate and charge for the gas used by averaging the amounts registered over similar periods and under similar conditions preceding or subsequent thereto, or over corresponding periods in previous years.

**Company's Rights:** The properly authorized employees of the Company shall at all times have the right of access to the premises into which gas has been introduced, for the purpose of examining the general service or to read, inspect, test, repair, replace or remove its meter or other equipment, or for such other purposes as may be necessary for the protection of the Company. In case of any willful, intentional, or unnecessary injury to or interference with the meter or any connection made to the house lines or services, the meter at the option of the Company may be removed, the service line cut off, and service discontinued.

#### **BILLS, PAYMENTS, NON-PAYMENTS**

Payment of bills for service rendered must be received by the due date as stated on the Customer's bill, which shall be thirty (30) days from the date billed. Bills for Gas Transportation Service shall be subject to a 5% per month late payment charge if payment is not received timely.

If the Customer shall fail to pay a bill after it has become delinquent, the Company may, seven (7) days after notice to the Customer, discontinue service. Whenever the Company has issued a service suspension notice to a Customer for non-payment of a gas bill, the Company may require a deposit equivalent to the Customer's average monthly bill for re-connection.

#### **MISCELLANEOUS REGULATIONS**

The Customer Agrees:

- (1) To be responsible for all damages to, or loss of, the Company's property located upon his premises, unless occasioned by fire or by the Company's negligence.

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RULES & REGULATIONS  
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- (2) To use gas supplied through Company's meter only; and if such meter is found defective by the Company, the Company may repair or replace same.
- (3) It is understood that the Company shall be under no duty to inspect, repair or maintain the service of other lines, connections, equipment or appliances located on the premises of the Customer.
- (4) Company shall have the right to make other or additional rules and regulations at any time, and the furnishing of gas hereunder shall not constitute a waiver of any prior or present claim or right held by Company against Customer.



# **B&W PIPELINE**

**10025 INVESTMENT DRIVE, SUITE 160  
KNOXVILLE, TENNESSEE 37932**

**TRA NO.1  
GAS TARIFF**



B&W PIPELINE  
GAS TARIFF  
TRA NO. 1

**B&W PIPELINE  
GAS TARIFF  
TRA NO. 1  
TENNESSEE REGULATORY AUTHORITY  
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**RATE SCHEDULE T-1**  
**Transportation Service**

**AVAILABILITY**

Transportation Service shall be subject to the following terms:

1. Service under this tariff will be determined based upon capacity availability as assessed by B&W Pipeline (Company). This capacity assessment may result in the decision to not service additional customers when their potential capacity demand may, at the Company's judgment, adversely affect the Company's ability to provide service to its existing customers.
2. Customer must be on or adjacent to the Company's existing mains and the mains shall, in the Company's judgment, be adequate to service the Customer's requirements without impairing service to other customers.
3. To ensure measurement integrity, each delivery point will constitute an indivisible measurement reading attributable to a single customer.

**MONTHLY BASE RATE**

Customer Base Use Charge	A fixed charge totaling \$210,624 per year, billed in 12 equal monthly installments of \$17,552 and allocated to the Company's customers in accordance with the terms of the TRA Order in Docket 15-00042.
Volumetric Charge	A volumetric charge of \$0.3081 per Mcf * Current Monthly Transportation Volumes intended to recover \$70,211 per year.

**MINIMUM BILL**

The Minimum Monthly Bill shall be the Fixed Charge as shown in the Monthly Base Rate as stated above and shall be due and payable in addition to any and all other applicable charges due under this Rate Schedule.

**PAYMENT TERMS**

All bills for service are due upon presentation. The stated amount shown on the bill shall apply if payment is received on or before the date as specified on the bill. Payments received after that date shall include a late payment penalty of five percent (5%) per month.

**RATE SCHEDULE T-1 (Continued)**  
**Transportation Service**

**OTHER TERMS AND CONDITIONS**

It is the intent that the Customer at all times receives the contract entitlement of gas supply from transportation service. The total maximum capacity availability of the Pipeline is 1,000 MCF/day. Service hereunder, however, shall be subject to the Company's Schedule for Limiting and Curtailing Gas Service as filed with the Tennessee Regulatory Authority.

The customers' total Daily Contract Entitlement is 1,000 MCF a day. Nothing in this agreement is intended or shall be deemed to obligate the Company to redeliver any gas to its customers if its customers have not previously caused an equal volume of gas (adjusted by shrinkage) to be injected into the pipeline in accordance to this Agreement.

In accordance with the terms set forth by the TRA Order in Docket 15-00042 and on the basis of the proportional annual usage and fixed Customer Base Use Charge. Navitas' Daily Contract Entitlement is 790 MCF per day and B&W Affiliate's Daily Contract Entitlement is 210 MCF per day. In no event the Company is obligated to deliver to its customers more than the Daily Contract Entitlement.

In the event a Customer takes daily gas deliveries in excess of the Customer's Daily Contract Entitlement where such volume is measured and recorded on a daily basis or in the event a Customer does not comply with a curtailment order as directed by the Company and takes gas in excess of the daily volume allowed by the Company, the transportation of such gas taken in excess of the Customer's Daily Gas Contracted Entitlement or curtailment volumes shall be paid for by the Customer at the greater of the current Volumetric Charge plus \$5.00 per Mcf and all applicable pipeline and/or gas supplier penalties and/or charges because of the Customer's failure to comply with a curtailment order as directed by the Company. These additional charges shall be in addition to all other charges payable under this Rate Schedule.

The payment of a charge for unauthorized over-run shall not under any circumstances be considered as giving any such Customer the right to take unauthorized over-run volumes, nor shall such payment be considered as a substitute for any other remedies available to Company against Customer for failure to respect its obligations to adhere to the provisions of its contract with the Company. The curtailment of gas deliveries in whole or in part under this schedule shall not be the basis for claims against the Company for any damages sustained by the Customers.

**DATA COLLECTION EQUIPMENT**

Customers provided service under this Rate Schedule shall be required to pay for the cost and installation of the Data Collection equipment (includes applicable income taxes) for the benefit of the Company. The Customer may elect to have the Data Collection equipment, other than the meter, installed by a qualified third party in accordance with the Company's specification. The meter and the connection of the data collection equipment to the meter shall be performed by the Company. All Customers shall also be required to pay the cost of any power, telephone lines, or wireless facilities necessary for the operation of such equipment.

**RATE SCHEDULE T-1 (Continued)**  
**Transportation Service**

**DELIVERY POINT MEASUREMENTS**

The Company is responsible for measuring flow through each delivery point. As compensation for this work, the Company will charge the corresponding Customer a monthly fee of \$50.00 per delivery point.

**SHRINKAGE**

The Company will retain up to ten percent (10.0%) of all volumes delivered to the Company for shrinkage, which shall be allocated based on volumes delivered to each Delivery Point during the same month in which the transportation services were rendered.

**BALANCING**

It shall be the Customer's responsibility to maintain a daily and monthly balance with the Company to insure system integrity and avoid any assessment of penalties against the Company by the Interstate Pipelines. To insure such, Customers are required to nominate on a daily basis. If the Company is assessed a penalty by a Customer's transporting pipeline, the Company shall have the right to pass-through all such penalties to the Customer to the extent the Customer or Customer's agent is responsible for causing the Company to be assessed such penalties.

**CASH OUT OF MONTHLY IMBALANCES**

Any difference between the quantities delivered to the Company for the account of the Customer for the month, and the quantities consumed by the Customer as metered for the month after adjustment for shrinkage as described above, shall be the monthly imbalance. This imbalance shall be resolved monthly by "cashing out" the imbalance as it is known at that time. In lieu of payment, either Party may correct the imbalance with equivalent volumes of gas.

**LIMITING AND CURTAILING GAS SERVICE**

Transportation Service hereunder shall be subject to the Company's Schedule for Limiting and Curtailing Gas Service as filed with the Tennessee Regulatory Authority.

**POSSESSION OF GAS**

After Customers deliver gas or cause gas to be delivered to the Company, the Company shall be deemed to be in control and possession of the gas until it is redelivered to the Customer. The Customer shall have no responsibility with respect to any gas deliverable to The Company or on account of anything which may be done, happen or arise, with respect to such gas until The Company delivers such gas to the Customer. The Company shall have no responsibility with respect to such gas before the Customer delivers such gas to the Company or after The Company redelivers such gas to the Customer or on account of anything which may be done, happen or arise with respect to such gas before such delivery or after such redelivery. The Company may commingle gas for delivery to the Customer with other volumes in its possession.

**RATE SCHEDULE T-1 (Continued)**  
**Transportation Service**

**WARRANTY OF TITLE TO GAS**

Customer warrants that it will have title to the gas at all times during transport on the Pipeline. Customer will indemnify The Company and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas, including claims for any royalties, taxes, license fees or charges applicable to such gas or to the delivery thereof to The Company for transportation.

**SPECIAL TERMS AND CONDITIONS**

This schedule is subject to interruption on one-half-hours' notice given by the Company by telephone or otherwise. The Company will curtail transportation gas service to the Customers under this schedule in order to prevent a shortage of gas for the use of Customers under the Company's other rate schedules.

Customer shall immediately discontinue the use of transportation gas service, to the extent of curtailment ordered, when and as directed by the Company; and authorized representatives of the Company shall have at all times the right of ingress and egress to the Customer's premises. Upon determination by the Company that the necessity for curtailment has ceased, the Company shall so notify the Customer by telephone or otherwise and the Customer shall not resume service until so notified.

**GENERAL TERMS AND CONDITIONS**

Transportation service hereunder shall be subject to the Company's rules and regulations as filed with the Tennessee Regulatory Authority. The effectiveness of this tariff sheet will terminate should it be determined by the Tennessee Regulatory Authority that the limiting provisions contained in Paragraph 1 of the availability section of this rate schedule are required to be implemented.

**RATE SCHEDULE T-2**  
**Schedule for Limiting and Curtailing Transportation Service**

**SUPPLY OR CAPACITY RELATED CURTAILMENTS**

In the event that the Company is forced to curtail its services, the Company will proceed with curtailment considering end use, impact on the local economy, and The Rules, Regulations, and Orders of the TRA and Laws of the State of Tennessee.

Under no circumstances will the Company be held liable by its Customers for any disturbances arising from any temporary interruption of Gas Transportation Service, whether total or partial, during times when a curtailment order from the Company is in effect.