

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 29, 2015

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IN RE:

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

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DOCKET NO.
15-00042

ORDER GRANTING THE CONSUMER ADVOCATE'S
AND NAVITAS TNNNG, LLC'S
PETITIONS TO INTERVENE

This matter is before the Hearing Officer of the Tennessee Regulatory Authority ("Authority" or "TRA")¹ upon a *Petition to Intervene* filed by the Consumer Advocate and Protection Division of the Office of the Tennessee Attorney General ("Consumer Advocate") on April 20, 2015 and a *Petition to Intervene* filed by Navitas TNNNG, LLC ("Navitas") on April 28, 2015.

BACKGROUND

B&W Pipeline, LLC ("B&W") is a public utility subject to the TRA's jurisdiction. On April 2, 2015, B&W filed a petition, under Tenn. Code Ann. § 65-5-103, seeking Authority approval to increase rates.²

PETITION TO INTERVENE

In its *Petition to Intervene*, the Consumer Advocate asks that the Authority grant its request to intervene in this proceeding because "[t]he interests of consumers... may be affected

¹ During the regularly scheduled Authority Conference held on April 20, 2015, the voting panel of Directors assigned in this docket voted unanimously to convene a contested case proceeding and appoint General Counsel or her designee to act as Hearing Officer to handle any preliminary matters arising in the proceeding.

² *Petition*, p. 1 (April 2, 2015).

by the TRA's decision in this case."³ In support of its request, the Consumer Advocate states that it is authorized under Tenn. Code Ann. § 65-4-118 to represent the interests of Tennessee consumers of public utility services in proceedings before the Authority.⁴

In its *Petition to Intervene*, Navitas asks that the Authority grant its request to intervene in this proceeding because "[t]he interests of Navitas and all its customers will be affected by the TRA's decisions in this proceeding."⁵

B&W has filed no objection to the intervention of either the Consumer Advocate or Navitas.

FINDINGS & CONCLUSIONS

Under Tenn. Code Ann. § 65-2-107, "All persons having a right under the provisions of the laws applicable to the authority to appear and be heard in contested cases as defined in this chapter shall be deemed parties to such proceedings for the purposes of this chapter. In addition, the authority may upon motion allow any interested person to intervene and become a party to any contested case." Along with its own statutes and rules, contested case proceedings before the Authority are governed by the provisions of Tenn. Code Ann. § 4-5-101, *et seq.*, known as the Tennessee Uniform Administrative Procedures Act ("UAPA"). Tenn. Code Ann. § 4-5-310 establishes the following criteria for considering requests for mandatory and permissive intervention:

- (a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:
 - (1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

³ *Advocate's Petition to Intervene*, p.2 (April 20, 2015).

⁴ *Id.* at 1.

⁵ *Navitas' Petition to Intervene*, p.2 (April 20, 2015).

- (2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and
 - (3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.
- (b) The agency may grant one (1) or more petitions for intervention at any time, upon determining that the intervention sought is in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.⁶

Further, the UAPA provides that a Hearing Officer may, at any time, limit or impose conditions upon or otherwise modify an intervenor's participation in the proceedings.⁷ Similarly, TRA Rule 1220-01-02-.08 directs that requests for intervention before the Authority are to be made and considered as follows:

- (1) Petitions for intervention shall be granted in accordance with T.C.A. § 4-5-310 and T.C.A. § 65-2-107.
- (2) A petition for intervention shall set forth with particularity those facts that demonstrate that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law. Intervention may be denied or delayed for failure to provide such specific facts.
- (3) A petition for intervention shall be filed at least seven (7) days prior to the date of the contested case hearing.⁸

Finally, TRA Rule 1220-1-2-.06 requires any party opposing a motion in a contested case to file and serve a response to the motion within seven (7) days of service of the motion.

Timeliness

Under Tenn. Code Ann. § 4-5-310(a)(1) and TRA Rule 1220-01-02-.08(3), a petition for

⁶ Tenn. Code Ann. § 4-5-310.

⁷ Tenn. Code Ann. § 4-5-310(c) and (d).

⁸ Tenn. Comp. R. & Regs. 1220-01-02-.08.

intervention must be filed at least seven (7) days prior to the date of the contested case hearing. The instant proceeding is in its early stages, and discovery has not formally commenced. Thus, the Consumer Advocate and Navitas appear to have been diligent in filing their requests to intervene in the usual course. Therefore, the Hearing Officer considers both the Consumer Advocate's and Navitas' *Petition to Intervene* timely-filed.

Content & Requisite Showing

Tenn. Code Ann. 4-5-310(a)(2) and TRA Rule 1220-01-02-.08(2) require that a petition to intervene state particular facts that demonstrate a legal right or interest held by the petitioner may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law. Tenn. Code Ann. § 65-4-118(b)(1) provides a general basis for the qualification of the Consumer Advocate as an intervening party to represent the interests of Tennessee public utility consumers, as follows:

The consumer advocate division has the duty and authority to represent the interests of Tennessee consumers of public utilities services. The division may, with the approval of the attorney general and reporter, participate or intervene as a party in any matter or proceeding before the authority or any other administrative, legislative or judicial body and initiate such proceeding, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the rules of the authority.⁹

Thus, according to the statute, with the approval of the Attorney General and upon satisfaction of the requisite showing for intervention under the UAPA and the TRA's Rules, the Consumer Advocate may be permitted to intervene as a party for the purpose of representing those Tennessee consumers of public utility services that have legal rights or interests that may be determined in proceedings before the TRA. Tenn. Code Ann. § 65-4-118(b)(1) provides for the Consumer Advocate's qualification as an intervenor under law, but in no way confers upon the Consumer Advocate an automatic or absolute right to participate in any particular Authority

⁹ Tenn. Code Ann. § 65-4-118(b)(1).

proceeding. In the instant proceeding, B&W seeks approval to increase rates. The Hearing Officer finds that there exists a sufficient factual basis upon which to find that legal rights or interests held by consumers generally and Navitas specifically may be determined in this proceeding, and that, under Tenn. Code Ann. § 65-4-118, the Consumer Advocate is qualified to represent those interests before the Authority.

As a customer Navitas is directly impacted by the rates that B&W is able to charge. In the instant proceeding, B&W seeks approval to increase rates, the Hearing Officer finds that there exists a sufficient factual basis upon which to find that legal rights or interests of Navitas specifically may be determined in this proceeding, and that, Navitas is entitled to represent its interests before the Authority.

Procedural Due Process

Finally, Tenn. Code Ann. 4-5-310(a)(3) requires that the Hearing Officer grant a petition for intervention only upon determining that “the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing intervention.” The petitioner in this matter, B&W, has not filed a response or otherwise objected to either the Consumer Advocate’s or Navitas’ request to intervene in this matter. Therefore, given the nature of the proceeding, the promptness of the request to intervene, and lack of opposition thereto, the Hearing Officer finds that the requested interventions should not unduly delay or prejudice the administration of these proceedings.

THEREFORE, upon due consideration, the Hearing Officer concludes:

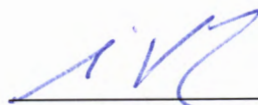
That the legal rights, duties, privileges, immunities or other legal interest of the consumers and property owners of natural gas services provided by B&W may be determined in this proceeding and that the Consumer Advocate qualifies under law as an intervenor for the

purpose of representing those consumer interests. Further, the Consumer Advocate's request to intervene is timely-filed and its intervention should not impair the interests of justice or the orderly and prompt conduct of the proceedings. For these reasons, the Hearing Officer concludes that the Consumer Advocate's *Petition to Intervene* should be granted.

That the legal rights, duties, privileges, immunities or other legal interest of Navitas in natural gas services provided by B&W may be determined in this proceeding and that Navitas qualifies as an intervenor for the purpose of representing those interests. Further, Navitas' request to intervene is timely-filed and its intervention should not impair the interests of justice or the orderly and prompt conduct of the proceedings. For these reasons, the Hearing Officer concludes that the Navitas' *Petition to Intervene* should be granted.

IT IS THEREFORE ORDERED THAT:

- 1) The *Petition to Intervene* filed by the Consumer Advocate and Protection Division of the Office of the Attorney General is granted.
- 2) The Consumer Advocate and Protection Division of the Office of the Attorney General may intervene and participate as a party in this proceeding and, as such, shall receive copies of any notices, orders, or other documents filed herein.
- 3) The *Petition to Intervene* filed by Navitas TN NG, LLC is granted.
- 4) Navitas TN NG, LLC may intervene and participate as a party in this proceeding and, as such, shall receive copies of any notices, orders, or other documents filed herein.
- 5)



Shiva K. Bozarth, Hearing Officer