

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

September 22, 2017

IN RE:

ACA FILING FOR THE NAVITAS TN NG, LLC
JELICO AND BYRDSTOWN SYSTEMS

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DOCKET NO.
17-00027

ORDER DENYING PETITION TO INTERVENE

This matter is before the Hearing Officer of the Tennessee Public Utility Commission (“Commission” or “TPUC”) to consider the *Petition to Intervene or, in the Alternative, to Convene a Contested Case Proceeding to Investigate the Prudence of Gas Purchases by Navitas* (“FWM’s *Petition to Intervene*”) filed by FWM Energy, LLC (“FWM”) on July 28, 2017.

RELEVANT BACKGROUND

On March 3, 2017, Navitas TN NG, LLC made its annual Actual Cost Adjustment (“ACA”) filing for the period covering January 1, 2016 to December 31, 2016 for its Jellico and Byrdstown systems. The Commission Utilities Division filed its Compliance Audit Report on July 27, 2017, and FWM filed its *FWM’s Petition to Intervene* on July 28, 2017. On August 18, 2017, Navitas filed its *Response in Opposition to Petition to Intervene or, in the Alternative, to Convene a Contested Case Proceeding to Investigate the Prudence of Gas Purchase by Navitas* (“Navitas’s *Response*”).¹

FWM’S PETITION TO INTERVENE

In *FWM’s Petition to Intervene* filed on July 28, 2017, FWM states that it is an affiliate of

¹ At the request of Navitas, the Hearing Officer allowed additional time for Navitas to file its response. FWM did not object to the request.

B&W Pipeline, LLC and owns natural gas wells in Fentress, Morgan and Scott counties in Tennessee and sells natural gas to Navitas. FWM states it seeks to intervene because FWM has offered to beat the price of gas of any competing offer, yet Navitas did not purchase gas from FWM in June, August, and September, 2016. FWM asserts that “it is reasonable to question whether Navitas exercised prudent judgment in its gas purchases in those there [sic] months. If in fact Navitas paid more for gas during any of those months than the price offered by FWM, Navitas should not be allowed to recover those additional and unnecessary gas costs from its customers.”² FWM seeks permission to intervene to raise these issues and maintains that FWM “clearly has an interest in insuring that Navitas is exercising prudent judgement in its purchasing decision,” and the intervention of FWM will not impair the orderly and prompt conduct of the proceedings.³ FWM requests that if the Commission determines that this docket is not yet a contested case defined by Tenn. Code Ann. § 4-5-102(3) that it “open a contested case proceeding, either as an agency-initiated investigation or as a complaint by FWM against Navitas, to investigate the prudence of the gas purchase practices of Navitas during 2016 and to grant appropriate relief consistent with the agency’s findings.”⁴

NAVITAS’S RESPONSE

In *Navitas’s Response* filed on August 18, 2017, Navitas asserts the Commission lacks jurisdiction to consider the prudence of small utilities’ gas purchases and that FWM has failed to state a claim upon which relief can be granted. Further, Navitas states FWM does not qualify as an intervenor and “consideration of the extraneous issue of the prudence of the utility’s gas purchases are not in the interest [of] justice and will impair the orderly and prompt conduct of the

² *FWM Petition to Intervene*, p. 2 (July 28, 2017).

³ *Id.*

⁴ *Id.* at 3.

proceeding.”⁵ In addition, Navitas denies the assertions made by FWM regarding gas purchases and asks that the *FWM Petition to Intervene* be denied, or in the alternative, that a contested case be convened.

FINDINGS & CONCLUSIONS

Tenn. Code Ann. § 4-5-310 establishes the following criteria for granting petitions to intervene:

(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;

(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

The Hearing Officer finds that allowing FWM to intervene in this docket would result in a delay in applying the correct ACA adjustment factor to the refund due to customers' account on customers' bills to correct an over-recovery by Navitas. Such delay is not in the interest of justice and impairs the prompt and orderly conduct of these proceedings. Therefore, the Hearing Officer concludes that an inquiry into the prudence of Navitas's gas purchases is better suited in the context of a contested

⁵ *Navitas Response*, p. 2 (August 18, 2017).

⁶ Tenn. Code Ann. § 4-5-310.

case proceeding held in a different docket.

The Hearing Officer does not adopt the arguments and assertions made in *Navitas's Response* regarding the authority of the Commission to review the prudence of gas purchases of smaller gas companies, such as Navitas, which are not Class A companies. The Commission has been given broad authority to exercise jurisdiction over the utilities it regulates. Tenn. Code Ann. § 65-4-117 provides:


- (a) The authority [commission] has the power to:
 - (1) Investigate, upon its own initiative or upon complaint in writing, any matter concerning any public utility as defined in § 65-4-101;

It is certainly within the purview of the Commission's authority to review the prudence of gas costs of any utility it regulates.

THEREFORE, upon due consideration, the Hearing Officer concludes that allowing FWM to intervene in this proceeding is not in the interest of justice and will impair the orderly and prompt conduct of the proceedings. In addition, neither FWM nor Navitas object to the prudence of Navitas's gas purchases being addressed in a new docket.⁷ For these reasons, the Hearing Officer concludes that the *FWM Petition to Intervene* should be denied. The Hearing Officer also recommends that the Commission open a new docket and convene a contested case proceeding to consider the gas purchase issues set forth in the *FWM's Petition to Intervene* and any other matters it deems appropriate.

IT IS THEREFORE ORDERED THAT:

The Petition to Intervene or, in the Alternative, to Convene a Contested Case Proceeding to Investigate the Prudence of Gas Purchases by Navitas filed by FWM Energy, LLC is denied.


Monica Smith-Ashford, Hearing Officer

⁷ See *FWM Petition to Intervene*, p. 3 (July 28, 2017); *Navitas's Response*, p. 3 (August 18, 2017).