

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION**

**NASHVILLE, TENNESSEE**

**May 20, 2020**

<b>IN RE:</b>	)	
	)	
<b>PETITION OF NAVITAS TN NG, LLC FOR</b>	)	<b>Docket No. 19-00057</b>
<b>APPROVAL OF AN ADJUSTMENT IN THE</b>	)	
<b>RATES, CHARGES AND TARIFFS</b>	)	

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**FINAL ORDER SETTING RATES**

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This matter came before Commissioner Herbert H. Hilliard, Commissioner David F. Jones, and Commissioner John Hie of the Tennessee Public Utility Commission (the “Commission” or “TPUC”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on March 9, 2020, for consideration of the *Petition of Navitas TN NG, LLC for Approval of an Adjustment in Rates, Charges and Tariffs* (“*Petition*”) filed on July 3, 2019 by Navitas TN NG, LLC (“Navitas” or “Company”).

In its *Petition*, Navitas sought Commission approval to adjust rates with an increased revenue requirement of \$128,957. In summary, the Company and the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) reached an agreement proposing a revenue requirement of \$37,425 which the Commission approved on March 9, 2020.

**I. BACKGROUND AND *PETITION***

Navitas is a regulated public utility and a domestic liability company owned by Navitas Assets LLC (“NALLC”) that provides natural gas service in the Byrdstown and Jellico areas

within the Campbell, Fentress, and Pickett Counties in Tennessee. According to the Company, the system within the town of Jellico serves approximately 548 customers with an additional 154 customers located across the state line in Clinton County, Kentucky.<sup>1</sup> The Fentress-Byrdstown system serves approximately 50 customers. By agreement, the Kentucky Public Service Commission allows the inclusion of these customers within the Tennessee jurisdiction.<sup>2</sup>

In the *Petition*, Navitas asserted existing revenues were not sufficient to recover operating expenses to allow it to earn a just and reasonable return on investments, fund increasing capital costs, or fund costs to meet state and federal compliance standards.<sup>3</sup> The Company sought proposed rates during the attrition period of 2020, which it projected to result in earnings in net operating income of \$119,923, which in turn will generate an overall return of 10.97%. Without the requested rate relief, the Company claimed it will incur a revenue deficiency for the attrition period of \$128,957, resulting in a -0.83% rate of return.<sup>4</sup>

In support of the *Petition*, Thomas Hartline, President and Treasurer of Navitas, affirmed the need for a \$128,957 revenue increase, representing a 25.4% increase in total revenue.<sup>5</sup> The Company represented this to be a 3.3% annual increase since the Company's last rate case ten years ago. According to Mr. Hartline, the Company's proposal is based upon assets as of December 31, 2018 consisting of \$1,842,872 of acquired cost and \$1,117,842 of accumulated depreciation, resulting in net plant of \$725,025 for pipeline assets.<sup>6</sup>

Mr. Hartline asserts that all costs and expenses, including gas commodity charges, are passed through to Navitas by Navitas Utility Company ("NUC") through monthly

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<sup>1</sup> Thomas Hartline, Pre-Filed Direct Testimony, p. 2 (July 3, 2019).

<sup>2</sup> *Petition*, p.2 (July 3, 2019).

<sup>3</sup> *Id.* at 2-3.

<sup>4</sup> *Id.* at 3-4.

<sup>5</sup> Thomas Hartline, Pre-Filed Direct Testimony, p. 2 (July 3, 2019).

<sup>6</sup> *Id.* at 4.

charges. During the test period, NUC billed Navitas approximately \$411,694 of its total operating expenses of \$3,507,322, or 11.74% of its operating costs.<sup>7</sup> In addition to the normal monthly charges, NUC bills certain costs such as third-party expenses incurred by the specific utility (e.g., legal fees for a regulatory proceeding).

Mr. Hartline notes that Navitas previously had a problem with customers disconnecting service in the spring and reconnecting in the fall in order to avoid a customer charge. This Commission approved a disconnect fee in the last rate case to help minimize this occurrence and the Company requested the disconnect fee remain in effect.<sup>8</sup>

### **III. TRAVEL OF THE CASE**

The Consumer Advocate filed a *Petition to Intervene* on July 12, 2019. Pursuant to a procedural schedule, the parties conducted discovery. On January 10, 2020, the Consumer Advocate submitted Pre-Filed Testimony contesting several aspects of the proposed rate increase, most notably the calculation rate base, while sponsoring calculations supporting a more modest rate increase.

#### **A. DIRECT TESTIMONY OF THE CONSUMER ADVOCATE**

On behalf of the Consumer Advocate, David N. Dittmore submitted Pre-Filed Testimony that supported an overall revenue increase of \$37,425 to achieve a 9.36% return.<sup>9</sup> Mr. Dittmore noted that Navitas is a small gas utility serving rural areas, which from an investment standpoint is quite limited compared to investment by larger utility companies and that the geographic diversity of Navitas curtails its ability to capitalize on economies of scale.<sup>10</sup>

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

<sup>8</sup> *Id.* at 5.

<sup>9</sup> David N. Dittmore, Pre-Filed Direct Testimony, p. 2 (January 10, 2020).

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

The Consumer Advocate uses a test period of 2018 and attrition period of 2020.<sup>11</sup> Based upon 2018 data, Mr. Dittmore estimated that Navitas serves 550 customers; the figure which the Consumer Advocate applied in calculating its overall rate adjustments.<sup>12</sup> Mr. Dittmore also noted that the median income for the area served by the Company is low, leaving little excess in household budgets to absorb a significant increase in gas rates.<sup>13</sup> Mr. Dittmore asserted the revenue increase sought in the *Petition* would result in customers paying \$232 more per year or \$20 per month.

With respect to rate base, Mr. Dittmore claimed “there is a major miscalculation” in the *Petition*.<sup>14</sup> Rather than the significant increase in rate base as presented by the Company, the Consumer Advocate calculated a significant decrease. The largest rate base adjustment made by the Consumer Advocate was the removal of the \$535,374 acquisition adjustment.<sup>15</sup> Therefore, the Consumer Advocate asserted any revenue deficiency is a result of increases in operating expenses.

Mr. Dittmore made a reduction to operating expenses of \$16,224 to eliminate the amortization expense associated with the costs removed from rate base. The final total revenue projection of Consumer Advocate is \$503,026 compared to the Company’s projection of \$524,869.<sup>16</sup> Mr. Dittmore asserted the correct conversion factor is 1.002855 which includes a gross-up for uncollectible expense of 0.285%.<sup>17</sup> Mr. Dittmore calculated a rate design based on the overall increase of 7.67% and applied that percent increase to each customer class based

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<sup>11</sup> *Id.* at 8.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> *Id.* at 6-7.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.* at 8-9.

<sup>16</sup> *Id.* at 12-14; CA Exhibit 6.1.

<sup>17</sup> *Id.* at 14.

upon pro-forma revenue levels representing an increase for each class as follows: Residential \$16,953, Industrial \$10,241, and Commercial \$10,231. Given the rate structure of the Company, Mr. Dittmore recommends the entire rate increase be applied to the volumetric rate where volumetric consumption is above 9 CCF monthly.<sup>18</sup>

Mr. Alex Bradley provided the Consumer Advocate's attrition period operation and maintenance ("O&M") expense forecast. Mr. Bradley reviewed the corporate structure of Navitas and the cost allocations to the Company by NUC, the entity that provides management services.<sup>19</sup> In forecasting O&M expenses, Mr. Bradley removed a projected 2% increase from NUC, synchronized the allocated costs with NUC's test period expense. O&M was further reduced by approximately \$3,600 to recognize FERC direct charges. After applying a growth factor, the adjustments, along with Mr. Dittmore's proposed \$42,162 for depreciation and amortization expense, the Consumer Advocate projected O&M expenses for the attrition period of \$431,018 compared to the Company's proposal of \$421,366.25.<sup>20</sup> Mr. Bradley projected \$13,592 for attrition year Ad Valorem taxes compared to the Company's projected \$12,847.27.

On behalf of the Consumer Advocate, Dr. Christopher C. Klein proposed the same capital structure as the Company: 67% debt and 33% equity.<sup>21</sup> The Consumer Advocate adopted a debt cost of 6.99%, but rejected the Company's proposed inclusion of the 2% debt cost premium associated with the owners' personal guarantees. The Consumer Advocate proposes an equity return of 14.18% and an overall cost of capital of 9.36%.<sup>22</sup>

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<sup>18</sup> *Id.* at 14-15.

<sup>19</sup> Alex Bradley, Pre-Filed Direct Testimony, pp. 5-6 (January 10, 2020).

<sup>20</sup> *Id.* at 6-8.

<sup>21</sup> Dr. Christopher C. Klein, Pre-Filed Direct Testimony, p. 5 (January 10, 2020).

<sup>22</sup> *Id.* at 5-6.

In addition to the revenue requirement, the Consumer Advocate had additional tariff recommendations related to disconnection fees. Mr. Dittemore recommended the tariff be amended to change the six month meter charge for any customer who disconnects service for two or more months to be the exact number of months (including partial months) that the customer was disconnected.<sup>23</sup> He further recommended the company's tariff be amended to prohibit disconnection of service if the current temperature is 32 degrees or less, or the forecasted temperature within the next forty-eight hours is expected to reach 20 degrees or less. In closing, Mr. Dittemore recommends the Commission open a docket to address cold weather disconnect policies of gas utilities throughout the state.<sup>24</sup>

#### **B. CONSENSUS ON NEW RATES**

On January 29, 2020, Thomas Hartline filed Pre-Filed Rebuttal Testimony on behalf of the Company. In conjunction with the Company's rebuttal, a joint letter was filed by the parties indicating the bulk of the Consumer Advocate's case in chief was not contested by Navitas.<sup>25</sup> In his Rebuttal Testimony, Mr. Hartline proposes a rate design increasing the monthly residential rate by \$2.00, the commercial rate by \$2.00, and the industrial rate by \$4.00 with the remaining balance of the revenue deficiency recovered from the highest volumetric usage tier.<sup>26</sup> Mr. Hartline testified that the Company follows the Oklahoma approved winter disconnection policy, a practice the Consumer Advocate recommends the Company continue to mirror.<sup>27</sup> Mr. Hartline asserts a Winter Connection Standard should be established through a formal process which would apply to all utilities.

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<sup>23</sup> David N. Dittemore, Pre-Filed Testimony, pp. 17-18 (January 10, 2020).

<sup>24</sup> *Id.* at 16.

<sup>25</sup> *Joint Letter of the Parties* (January 31, 2020).

<sup>26</sup> Thomas Hartline, Pre-Filed Rebuttal Testimony, p. 3 (January 29, 2020).

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

Mr. Hartline also discusses several issues which he describes are for the record and intended to educate and inform the Commission on issues facing small rural utilities such as competition from propane providers and electric municipals.<sup>28</sup> Among these issues, the Company notes that the Consumer Advocate's Weighted Average Cost of Capital ignores the personal guarantee of the owners of Navitas.

During a status conference held on February 6, 2020 by the Hearing Officer, the parties provided further clarification and indicated agreement on the following issues:

1. The revenue requirement is \$37,425 which produces a 9.36% fair rate of return;
2. The Company will adopt the Oklahoma policies as they relate to winter disconnections;
3. The rate reconnection fee established in the Company's last rate case will remain in effect; and
4. The rate design as proposed by the Company contained within Thomas Hartline's Rebuttal Testimony.

Further, the agreement was based upon both parties' acceptance of the calculated results of operations performed by the Consumer Advocate attached to the testimony of David N. Dittmore and Alex Bradley. As such, there were no contested issues between the parties.

### **III. THE HEARING AND POST HEARING FILINGS**

The Hearing on the merits of the *Petition* was held on February 18, 2019, as noticed by the Commission on February 7, 2019. Participating in the Hearing were the following parties and their respective counsel:

Navitas TN NG LLC – **Howard La Don Baltimore**, Esq., Farris Bobango, PLC, 414 Union Street, Suite 1105, Nashville, Tennessee 37219.

Consumer Advocate Unit – **Daniel P. Whitaker, III**, Esq., Office of the Tennessee Attorney General, Consumer Advocate Unit in the Financial Division, P.O. Box 20207, Nashville, Tennessee 37202-0207.

The Hearing Panel heard testimony from Consumer Advocate witnesses David N. Dittmore,

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<sup>28</sup> *Id.* at 4-6

Alex Bradley, and Dr. Christopher Klein. On behalf of the Company, Thomas Hartline testified telephonically.<sup>29</sup> As indicated by the *Joint Letter* filed on January 31, 2020, the parties waived cross-examination and represented there were no contested issues. The panel solicited comments from the public, but no member of the public sought to be heard.

#### **IV. CRITERIA FOR ESTABLISHING JUST AND REASONABLE RATES**

The Commission has jurisdiction to set the rates of public utilities operating in the State of Tennessee.<sup>30</sup> In setting rates for public utilities, the Commission 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>31</sup> A public utility possesses the burden of proof on a petition to approve an adjustment of its rates.<sup>32</sup>

The Commission must also approve a rate that provides the regulated utility an opportunity to earn a just and reasonable return on its investments.<sup>33</sup> The Commission considers petitions for a rate increase, filed pursuant to Tenn. Code Ann. § 65-5-103, 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
4. The rate of return the utility should earn.

There is no single, precise measure of the fair rate of return a utility is allowed an opportunity to earn. Therefore, the Commission must exercise its judgment in making an

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<sup>29</sup> *Order Granting Electronic Participation in Hearing* (February 12, 2020).

<sup>30</sup> Tenn. Code Ann. §§ 65-4-101(6); 65-4-104; 65-5-101, *et seq.*

<sup>31</sup> Tenn. Code Ann. § 65-5-101 (2018).

<sup>32</sup> Tenn. Code Ann. § 65-5-103(a) (2018).

<sup>33</sup> *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).



appropriate determination. The Commission, however, is not without guidance in exercising its judgment:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.<sup>34</sup>

In addition, the United States Supreme Court has determined that regulated utilities are entitled to a return that is “just and reasonable.”<sup>35</sup> The rate a utility is permitted to charge should enable it “to operate successfully, to maintain its financial integrity, to attract capital, and to compensate investors for the risks assumed.”<sup>36</sup>

The general standards to be considered in establishing the fair rate of return for a public utility are financial integrity, capital attraction, and setting a return on equity that is commensurate with returns investors could achieve by investing in other enterprises of corresponding risk.<sup>37</sup> Thus, rates established must allow a company to cover its operating expenses and provide an opportunity to earn a fair rate of return on a company’s investment used to provision service. Further, a rate should be reasonable not only when it is first established, but also for a reasonable time thereafter.<sup>38</sup>

The Commission has wide discretion with regard to setting rates. The Commission may “utilize an historical test period, a forecast period, a combination of these where necessary, or

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<sup>34</sup> *Id.* at 692-693; *see also Duquesne Light Co. v. Barasch*, 488 U.S. 299, 310 (1989).

<sup>35</sup> *Federal Power Comm’n v. Hope Natural Gas Co.* 320 U.S. 591, 605 (1944).

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

<sup>37</sup> *Id.* at 603.

<sup>38</sup> *McCardle v. Indianapolis Water Co.*, 272 U.S. 400, 408-409, 47 S.Ct 144, 148 (1926); *Southern Bell Telephone & Telegraph Co. v. Tennessee Pub. Serv. Comm’n*, 304 S.W2d 640, 647 (1944).

any other accepted method of rate making necessary to give a fair rate of return.”<sup>39</sup> The Tennessee Supreme Court noted in *Powell Tel. Co. v. Tennessee Pub. Serv. Comm’n* that, “there is no statutory nor decisional law that specifies any particular approach that must be followed by the Commission. Fundamentally, the establishment of just and reasonable rates is a value judgment to be made by the Commission in the exercise of its sound regulatory judgment and discretion.”<sup>40</sup> Accordingly, the Commission is not limited to adopting any particular approach or to adopting a specific test period in making known and measurable adjustments to produce just and reasonable rates.<sup>41</sup>

Applying these principles and 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.

## **V. FINDINGS AND CONCLUSIONS**

Based upon the evidentiary record in this proceeding, the Hearing Panel found the calculations adopted by both parties to be accurate and the methodologies employed to be consistent with ratemaking policies generally accepted by this Commission. As such, the Hearing Panel found that the agreed upon revenue requirement and rates proposed herein fall within the zone of reasonableness. Consistent with this finding, the Hearing Panel voted unanimously to adopt the following:

1. A test period of the calendar year 2018 and an attrition period of the calendar year 2020;
2. Rate Base totaling \$568,991 which is comprised of \$1,938,217 in Total Additions and \$1,369,226 in Total Deductions;
3. Attrition period revenues of \$503,026;
4. Attrition period Operating and Maintenance Expenses of \$487,072;
5. Operating Income At Current Rates of \$15,954;

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<sup>39</sup> *Powell Tel. Co. v. Tennessee Pub. Serv. Comm’n*, 660 S.W.2d 44, 46 (Tenn.1983); *Am. Ass’n of Retired Persons v. Tennessee Pub. Serv. Comm’n*, 896 S.W.2d 127, 133 (Tenn.Ct.App.1994).

<sup>40</sup> *Powell*, 660 S.W.2d at 46.

<sup>41</sup> *CF Industries v. Tennessee Pub. Serv. Comm’n*, 599 S.W.2d 536, 543 (Tenn. 1980).

6. A Long and Short-Term Debt ratio of 67% and a Common Equity Ratio of 33%, with a debt cost rate of 6.99% and a return on equity of 14.18%. This results in an overall authorized Fair Rate of Return of 9.36%;
7. A Total Operating Income Deficiency is \$37,425; and
8. The rate design presented in the Rebuttal Testimony of Thomas Hartline to recover the revenue deficiency.

During the proceeding, both parties referenced the lack of tariff language regarding temperature based disconnections. The Hearing Panel agreed with the parties that it is in the best interest of Tennessee consumers to have such a policy in place. Therefore, the Hearing Panel voted unanimously to require Navitas to file a tariff which mirrors the existing Oklahoma temperature based disconnection policy as of March 9, 2020.

Finally, in the Company's previous rate case in Docket No. 12-00068, the Commission found a Re-Connection/Temporary Disconnection Fee as a reasonable policy. Such policy is sound and the tariff should remain in place, with the fee based upon the approved base rates.

**IT IS THEREFORE ORDERED THAT:**

1. The rates filed by Navitas TN NG, LLC on July 3, 2019 are denied;
2. For purposes of the rates herein, the test period of the calendar year 2018 and an attrition period of the calendar year 2020 is adopted;
3. Rate Base totaling \$568,991 which is comprised of \$1,938,217 in Total Additions and \$1,369,226 in Total Deductions;
4. Attrition period revenues of \$503,026;
5. Attrition period Operating and Maintenance Expenses of \$487,072;
6. Operating Income At Current Rates of \$15,954;

7. A Long and Short-Term Debt ratio of 67% and a Common Equity Ratio of 33%, with a debt cost rate of 6.99% and a return on equity of 14.18%. This results in an overall authorized Fair Rate of Return of 9.36%;

8. A Total Operating Income Deficiency is \$37,425; and

9. The rate design presented in the Rebuttal Testimony of Thomas Hartline to recover the revenue deficiency.

10. Navitas TN NG LLC shall file a tariff which mirrors the existing Oklahoma temperature based disconnection policy as of March 9, 2020.

11. Navitas TN NG LLC shall continue to apply the approved Re-Connection/Temporary Disconnection Fee.

12. Any person who is aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen days from the date of this Order; and

13. Any person who is aggrieved by the Commission'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.

**Commissioner Herbert H. Hilliard, Commissioner David F. Jones, and Commissioner John Hie concur. None dissent.**

**ATTEST:**



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**Earl R. Taylor, Executive Director**