

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE

July 29, 2019

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IN RE:

PETITION OF NAVITAS TNG, LLC
FOR APPROVAL OF AN ADJUSTMENT
IN THE RATES, CHARGES, AND
TARIFFS

Docket No. 19-00057

AMENDED PROPOSED PROTECTIVE ORDER

To expedite the flow of filings, discovery, exhibits and other materials, and to facilitate the prompt resolution of disputes as to the confidentiality of material, adequately protect material entitled to be kept confidential and to ensure that protection is afforded only to material so entitled, the Tennessee Public Utility Commission ("TPUC") hereby orders that:

1. For the purpose of this Protective Order ("Order"), proprietary or confidential information, hereinafter referred to as CONFIDENTIAL INFORMATION, shall mean documents, testimony, or information in whatever form which the producing party, in good faith, and based on reasonable inquiry, deems to contain trade secrets, confidential research, development or other sensitive information protected by state or federal law, regulation or rule, and which has been specifically designated by the producing party. A producing party is defined as the party creating the CONFIDENTIAL INFORMATION as well as the party having actual physical possession of information produced pursuant to this Order. All summaries, notes, extracts, compilations or other direct or indirect reproduction from or of any protected materials, shall be entitled to protection under this Order. Documents containing CONFIDENTIAL INFORMATION shall be conspicuously and specifically labeled as "CONFIDENTIAL" on each printed page or in the file name of the electronic file containing CONFIDENTIAL INFORMATION and on the cover page of paper documents and on the computer disc or other

media containing confidential electronic files. The documents must be produced in a way that will clearly identify to others that it contains CONFIDENTIAL INFORMATION. Any document so designated shall be handled in accordance with this Order. The provisions of any document containing CONFIDENTIAL INFORMATION may be challenged under paragraph 12 of this Order.

2. Any individual or company subject to this Order, including producing parties or persons reviewing CONFIDENTIAL INFORMATION, shall act in good faith in discharging their obligations hereunder. Parties or nonparties subject to this Order shall include the Office of the Attorney General. Anything else in this Order to the contrary notwithstanding, if parties other than the Office of the Attorney General are permitted to intervene, they will be allowed access to Confidential Information only to the extent and under the conditions permitted by separate order.

3. Subject to and without modifying the provision of paragraph 2 above, CONFIDENTIAL INFORMATION shall be disclosed only to the following persons:

- (a) counsel of record for the parties in this case and associates, secretaries, and paralegals actively engaged in assisting counsel of record in this docket and any appeals therefrom;
- (b) in-house counsel for the parties;
- (c) officers, directors, or employees of the parties, including employees of the Office of the Tennessee Attorney General; provided, however, that CONFIDENTIAL INFORMATION shall be shown only to those persons having a need to know;
- (d) TPUC Commissioners and members of the staff of the TPUC;
- (e) outside consultants and expert witnesses employed or retained by the parties or their counsel, who have access to CONFIDENTIAL INFORMATION solely for evaluation, testing, testimony, preparation for trial or other services related to this docket, provided that to the extent that any party seeks to disclose CONFIDENTIAL INFORMATION to any outside consultant or expert witness who is expected to testify on that party's behalf, the party shall give five (5) days written notice to the producing party of intention to disclose CONFIDENTIAL INFORMATION. During such notice period, the producing party may move to prevent or limit disclosure for cause,

1 in which case no disclosure shall be made until the TPUC, the Hearing Officer, the
2 Administrative Law Judge or court rules on the motion. Any such motion shall be filed within
3 three (3) days after service of the notice. Any response shall be filed within three (3) days after
4 service of the notice. Pre hearing conferences may be called to confer with the parties on the
5 Motions to Limit Disclosure. All service shall be by hand delivery or by facsimile.

6 Under no circumstances shall any CONFIDENTIAL INFORMATION be disclosed to or
7 discussed with anyone associated with the marketing of services in competition with the products,
8 goods or services of the producing party.

9 4. Prior to disclosure of CONFIDENTIAL INFORMATION to any of the authorized
10 persons, the counsel representing the party who is to receive the CONFIDENTIAL
11 INFORMATION shall provide a copy of this Order to the recipient Commissioner, staff member,
12 employee or, officer, who shall be bound by the terms of this Order. Prior to disclosure of
13 CONFIDENTIAL INFORMATION to any outside consultant or expert witness employed or
14 retained by a party, counsel shall provide a copy of this Order to such outside consultant or
15 expert witness, who shall sign an Affidavit in the form of that attached to this Order attesting that
16 he or she has read a copy of this Order, that he or she understands and agrees to be bound by the
17 terms of this Order, and that he or she understands that unauthorized disclosure of the documents
18 labeled "CONFIDENTIAL" constitutes a violation of this Order. This Affidavit shall be signed
19 in the presence of and be notarized by a notary public. Counsel of record for each party shall
20 provide the producing party a copy of each such Affidavit and shall keep the Affidavits executed
21 by all experts or consultants retained by that party, whether or not expected to be called as a
22 witness, on file in their respective offices.

23 5. If any party or non-party subject to this Order inadvertently fails to label documents as
24 "CONFIDENTIAL" in accordance with the provisions of this Order when producing such
25 documents, such failure shall not constitute a waiver of confidentiality, provided the party or
26 nonparty who has produced the document shall notify the recipient of the document in writing
27 within five (5) days of discovery of such inadvertent failure to label the document as

1 "CONFIDENTIAL." At that time, the recipients will immediately treat the subject document as
2 CONFIDENTIAL INFORMATION. In no event shall the TPUC, or any other party to this Order,
3 be liable for any claims or damages resulting from the disclosure of a document while not so
4 labeled as "CONFIDENTIAL." An inadvertent failure to label a document as "CONFIDENTIAL"
5 shall not, in any way, affect the TPUC's determination as to whether the document is entitled to
6 CONFIDENTIAL INFORMATION status.

7 6. Any papers filed in this proceeding that contain, quote, paraphrase, compile or otherwise
8 disclose documents covered by the terms of this Order, or any information contained therein,
9 shall be filed with the TPUC in sealed envelopes labeled "CONFIDENTIAL." The filing party
10 shall also include with the filing a public version of the papers with any CONFIDENTIAL
11 INFORMATION redacted. Only the redacted public version may be placed in the TPUC's public
12 file and/or posted on the TPUC website. Each sealed envelope shall be labeled to reflect the style
13 and docket number of this proceeding and to identify the subject matter of the content of the
14 sealed envelope. The envelopes shall be maintained in a locked filing cabinet. The envelopes
15 shall not be opened or their contents reviewed by anyone except upon order by the TPUC,
16 Hearing Officer, or Administrative Law Judge after due notice to counsel of record.
17 Notwithstanding the foregoing, the Commissioners and the staff of the TPUC may review any
18 paper filed as CONFIDENTIAL INFORMATION and labeled "CONFIDENTIAL" without
19 obtaining an order of the TPUC, Hearing Officer, or Administrative Law Judge, provided the
20 Commissioners and staff maintain the confidentiality of the paper in accordance with the terms
21 of this Order.

22 7. Documents, information and testimony designated as CONFIDENTIAL
23 INFORMATION and labeled "CONFIDENTIAL," in accordance with this Order, may be
24 disclosed in testimony at the Hearing on the merits of this proceeding and offered into evidence
25 in any hearing related to this action, subject to the applicable Rules of Evidence and to such
26 future orders as the TPUC, Hearing Officer, or Administrative Law Judge may enter. Any party
27 intending to use documents, information, or testimony designated as CONFIDENTIAL

1 INFORMATION shall inform the producing party and the TPUC, Hearing Officer, or
2 Administrative Law Judge, prior to the Hearing on the merits of the case, of the proposed use,
3 and shall advise the TPUC, the Hearing Officer, or Administrative Law Judge, and the producing
4 party before use of such information during witness examinations so that appropriate measures
5 can be taken by the TPUC, Hearing Officer, or Administrative Law Judge to protect the
6 confidential nature of the information.

7 8. Except for documents filed with the TPUC, all documents covered by the terms of this
8 Order that are disclosed to the requesting party shall be maintained separately in files labeled
9 "CONFIDENTIAL" and labeled with reference to this Order at the offices of the requesting
10 party's counsel of record.

11 9. Nothing herein shall be construed as preventing any party from continuing to use and
12 disclose any information (a) that is in the public domain, or (b) that subsequently becomes part
13 of the public domain through no act of such party, or violation of this Order, or (c) that is
14 disclosed to it by a third party, where said disclosure does not itself violate any contractual or
15 legal obligation or terms of this Order, or (d) that is independently developed by a party, or (e)
16 that is known or used by it prior to this proceeding. The burden of establishing the existence of
17 (a) through (e) shall be upon the party attempting to use or disclose such information.

18 10. Any party may contest the designation of any document or information as
19 CONFIDENTIAL INFORMATION by filing a motion with the TPUC, Hearing Officer,
20 Administrative Law Judge or the courts, as appropriate, for a ruling that the documents,
21 information, or testimony should not be so treated. All documents, information and testimony
22 designated as CONFIDENTIAL INFORMATION, however, shall be maintained as such until
23 the TPUC, Hearing Officer, Administrative Law Judge, or a court orders otherwise. A motion to
24 contest must be filed not later than five (5) days after receipt of the material designated
25 CONFIDENTIAL INFORMATION or twenty (20) days prior to the Hearing on the merits,
26 whichever date occurs later in time. Any reply seeking to protect the status of their
27 CONFIDENTIAL INFORMATION must be received not later than five (5) days prior to the
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1 Hearing on the merits. Motions made and subsequent replies received within the five (5) days
2 prior to the Hearing on the merits shall be presented to the TPUC at the Hearing on the merits for
3 a ruling.

4 11. Nothing in this Order shall prevent any party from asserting any objection to discovery.

5 12. Nonparty witnesses shall be entitled to invoke the provisions of this Order by designating
6 information disclosed or documents produced for use in this action as CONFIDENTIAL
7 INFORMATION pursuant to the terms of this Order.

8 13. No person authorized under the terms herein to receive access to documents, information,
9 or testimony designated as CONFIDENTIAL INFORMATION shall be granted access until
10 such person has complied with the requirements set forth in paragraph 4 of this Order.

11 14. Any person to whom disclosure or inspection is made in violation of this Order shall be
12 bound by the terms of this Order.

13 15. Upon an order becoming final in this proceeding and conclusion of any appeals resulting
14 from such an order, except as to the Attorney General and the TPUC, all the filings, exhibits, and
15 other materials designated as CONFIDENTIAL INFORMATION and all copies thereof shall be
16 returned to counsel of the party who produced the filings, exhibits, and other materials within
17 fifteen (15) days of a written request from the producing party, or counsel in possession of such
18 documents shall certify to counsel of the producing party that all the filings, exhibits, and other
19 materials designated as CONFIDENTIAL INFORMATION and all copies thereof have been
20 destroyed. To the extent permitted by law, the Attorney General may elect to retain the
21 CONFIDENTIAL INFORMATION provided it continues to comply with the terms of this Order.
22 Further, the TPUC shall retain copies of information designated as CONFIDENTIAL or
23 PROTECTED SECURITY MATERIALS as may be necessary to maintain a complete record of
24 this Docket intact.

25 16. After termination of this proceeding, the provisions of this Order relating to the secrecy
26 and confidential nature of confidential documents, information and testimony shall continue to
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1 be binding, upon parties hereto and their officers, employers, employees, agents, and/or others
2 for five (5) years unless this Order is vacated or modified.

3 17. Nothing herein shall prevent entry of a subsequent order, upon an appropriate showing,
4 requiring that any documents, information or testimony designated as CONFIDENTIAL
5 INFORMATION shall receive protection other than that provided herein.

6 18. In addition to the other provisions of this Order, Navitas, and its affiliates (the
7 "Company") may designate and label as "PROTECTED SECURITY MATERIALS" documents
8 and information related to security measures undertaken to protect public health and safety. The
9 Company shall provide access to PROTECTED SECURITY MATERIALS to TPUC
10 Commissioners and members of the staff of the TPUC and further only to authorized
11 representatives of the Intervenor in this docket. Authorized representatives shall be limited to
12 the following: one counsel of record and one other staff member or person under contract to the
13 staff, each authorized in writing by a senior official of the TPUC to have such access; and with
14 respect to any other party, two counsel of record, the Tennessee Attorney General and the Chief
15 Deputy of the Office of the Tennessee Attorney General and a single other person, employed by
16 or under contract to the party, authorized by that party in a written certification mutually
17 agreeable to the parties.

18 19. The Company shall provide access by an authorized representative to PROTECTED
19 SECURITY MATERIALS only after such authorized representative has executed an Affidavit in
20 the form of that attached to this Order and provided a copy to the Company. Except with consent
21 of the Company: (i) access shall be at the offices of the Company or its counsel of record and
22 under supervision of the Company; (ii) PROTECTED SECURITY MATERIALS shall not be
23 removed from the offices of the Company or its counsel; and (iii) no copies shall be provided to
24 an authorized representative except as provided herein. Authorized representatives may make
25 notes or memoranda from a review of the PROTECTED SECURITY MATERIALS and may
26 remove such notes and memoranda. In all other respects such notes and memoranda shall remain
27 PROTECTED SECURITY MATERIALS and subject to the provisions hereof. PROTECTED
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1 SECURITY MATERIALS shall be used only to assist TPUC staff or any other party to prepare
2 for and to try this proceeding and shall not be used for any other purpose in this or any other
3 jurisdiction.

4 20. Except as provided in this Order, the contents of PROTECTED SECURITY
5 MATERIALS to which the TPUC staff or other party is given access, and any notes, memoranda,
6 or any form of information or opinions regarding or derived from the PROTECTED SECURITY
7 MATERIALS shall not be disclosed to anyone other than an authorized representative in
8 accordance with this Order, except that an authorized representative may disclose his or her
9 conclusions or findings solely within, and for the purposes of, this proceeding and in accordance
10 with this Order. PROTECTED SECURITY MATERIALS shall not otherwise be published,
11 disclosed or divulged except as expressly provided herein. The TPUC staff and any other party
12 shall treat all notes and memoranda or opinions regarding or derived from the PROTECTED
13 SECURITY MATERIALS as highly confidential and shall keep them in a secure location with
14 access limited to an authorized representative and the contents of PROTECTED SECURITY
15 MATERIALS and any information derived from them shall be considered highly confidential,
16 and shall not be deemed public records. The TPUC staff, any party, Hearing Officer, or the
17 TPUC Commissioners may discuss any position or conclusion regarding security expenditures
18 and testimony in briefs, orders, pleadings, or hearings in this proceeding in accordance with this
19 Order.

20 21. Upon written request from the Company within one (1) month from the conclusion of this
21 proceeding or any judicial review proceedings involving security related expenditures, the TPUC
22 staff and any party will either return any PROTECTED SECURITY MATERIALS, any notes or
23 memoranda related thereto and any copies thereof to the Company or certify to the Company in
24 writing that all such notes, memoranda and copies have been destroyed. Any electronic copies of
25 PROTECTED SECURITY MATERIALS made by authorized representatives shall be
26 eliminated.

22. The Attorney General and his staff have authority to enter into non-disclosure agreements pursuant to Tenn. Code Ann. § 65-4-118 which are consistent with state and federal law, regulations and rules.

23. The Attorney General and his staff agree to keep CONFIDENTIAL INFORMATION and PROTECTED SECURITY MATERIALS in a secure place and will not permit them to be seen by any person who is not an employee of the State of Tennessee, the Office of the Attorney General and Reporter, or a person who has signed a Non-Disclosure Agreement.

24. The Attorney General and his staff may make copies of CONFIDENTIAL INFORMATION and any portion thereof. To the extent permitted by state and federal law, regulations and rules, all notes utilizing supporting information shall be subject to the terms of this Order to the extent factual assertions are derived from the supporting information.

25. To the extent permitted by state law, the Attorney General will provide timely notice of filing or disclosure in the discharge of the duties of the Office of the Attorney General and Reporter, pursuant to Tenn. Code Ann. § 10-7-504(a)(5)(C) or any other law, regulation or rule, so that the Company may take action relating to disclosure.

26. The obligations of the Attorney General and his staff under this Order are further subject to the state's Public Records Act and other open records statutes. Nothing in this Order is intended to violate or alter the state's Public Records Act or Freedom of Information Act ("FOIA"). In the event that the Attorney General or member of his staff is served with a subpoena, public records request, FOIA request, or other request that calls for the production of confidential commercial information labeled as "CONFIDENTIAL INFORMATION" or "PROTECTED SECURITY MATERIALS" by the Company, the Attorney General will notify the Company by notifying the undersigned of the existence of the subpoena, public records request, FOIA request, or other request, at least five (5) business days before responding to the request to the extent permitted by state law and orders of a court, as long as the Attorney General or his staff is able to respond to the request within a reasonable time. The Attorney General or his staff may elect to wait to produce such information as allowed by state law in order to

1 provide the Company an opportunity to challenge said subpoena or request or to make
2 arrangements to preserve the confidentiality of the confidential commercial information labeled
3 as "CONFIDENTIAL INFORMATION" or "PROTECTED SECURITY MATERIALS" by the
4 Company that is subject to such request.

5 27. The designation of any information, documents or things in accordance with this Order as
6 constituting "CONFIDENTIAL INFORMATION" or "PROTECTED SECURITY
7 MATERIALS" and the Attorney General's or his staffs treatment of such material as confidential
8 or proprietary in compliance with this Order is not an admission or agreement by the Attorney
9 General or his staff that the material constitutes or contains confidential commercial information
10 or trade secret information and shall not be deemed to be either a waiver of the state's right to
11 challenge such designation or an acceptance of such designation. The Company agrees to
12 designate information, documents or things provided to the Attorney General as
13 CONFIDENTIAL INFORMATION and PROTECTED SECURITY MATERIALS if it has a
14 good faith basis for the claim. The Company will upon request of the Attorney General or his
15 staff provide a written explanation of the details, including statutory authority that support its
16 CONFIDENTIAL INFORMATION and PROTECTED SECURITY MATERIALS claim within
17 ten (10) days of a written request. The Company also specifically agrees that it will not designate
18 any documents as CONFIDENTIAL INFORMATION or label such documents as
19 "CONFIDENTIAL" if the documents:

- 20 (a) have been distributed to the public, consumers or others; or
21 (b) are not maintained by the Company as CONFIDENTIAL INFORMATION and
22 PROTECTED SECURITY MATERIALS.

23 28. Nothing in this Order shall prevent the Attorney General from using the
24 CONFIDENTIAL INFORMATION and PROTECTED SECURITY MATERIALS received for
25 investigative purposes in the discharge of the duties of the Office of the Attorney General and
26 Reporter. Additionally, nothing in this Order shall prevent the Attorney General from informing
27 state officials and third parties of the fact of an investigation, as needed, to conduct the

1 investigation. Without limiting the scope of this paragraph, nothing in this Order shall prevent
2 the Attorney General from contacting consumers whose names were provided by the Company
3 or from discussing with any consumer any materials that he or she allegedly received from the
4 Company or confirming that a consumer actually received the materials.

5 29. All information, documents and things designated as CONFIDENTIAL INFORMATION
6 or PROTECTED SECURITY MATERIALS and produced in accordance with this Order may be
7 disclosed in testimony or offered into evidence at any TPUC or court hearing, trial, motion or
8 proceeding of this matter, subject to the provisions of this Order, including Paragraph 7, and the
9 applicable Rules of Evidence and any order the TPUC may enter to protect the confidentiality of
10 information offered at any hearing or other proceeding. The party who produced the information,
11 documents and things designated as CONFIDENTIAL INFORMATION or PROTECTED
12 SECURITY MATERIALS agrees to stipulate to the authentication of such information,
13 documents and things in any such proceeding.

14 30. Nothing in this Agreement is intended to restrict or alter federal or state laws, regulations
15 or rules.

16 31. Any person who has signed a non-disclosure certificate or is otherwise bound by the
17 terms of this Order shall continue to be bound by this Order and/or certificate even if no longer
18 engaged by the TPUC or Intervenors.

19
20 **IT IS HEREBY ORDERED.**

21
22 _____
Hearing Officer

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24 **SUBMITTED FOR ENTRY**

25
26 BY: H. Linton Baltimore
27

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE
July 29, 2019

IN RE:

PETITION OF NAVITAS TNG, LLC
FOR APPROVAL OF AN ADJUSTMENT
IN THE RATES, CHARGES, AND
TARIFFS

Docket No. 19-00057

AGREEMENT TO COMPLY WITH PROTECTIVE ORDER

I have reviewed the Protective Order entered in the above captioned matter and agreed to abide by and be bound by its terms. I understand that unauthorized disclosure of documents labeled CONFIDENTIAL will be a violation of the Order.

Date

Name

STATE OF

COUNTY OF

Personally appeared before me, _____, a Notary Public,
_____ with whom I am personally acquainted, who
acknowledged that he/she executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this _____ day of _____, _____.

Notary Public

My Commission Expires: _____