

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

September 27, 2019

IN RE:

**INVESTIGATION INTO NAVITAS UTILITY
CORPORATION'S NOTICE OF PROBABLE
SHUTDOWN AND DISCONTINUATION OF
TENNESSEE SERVICE**

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**DOCKET NO.
19-00084**

ORDER ON STATUS CONFERENCE

This matter came before the Hearing Officer of the Tennessee Public Utility Commission ("Commission" or "TPUC") at a Status Conference held on September 17, 2019, to discuss how to proceed with the issues presented in the docket and to consider the *Petition to Intervene* filed by the Consumer Advocate Unit in the Financial Division of the Office of the Attorney General ("Consumer Advocate").

RELEVANT BACKGROUND

On September 11, 2019, Navitas TN NG, LLC ("Navitas") filed a letter with the Commission stating the Byrdstown Fentress pipeline will be forced to shut down, which will result in Navitas discontinuing gas service to its Tennessee customers. Navitas stated this action is the result of the need to pass on the cost of increased transportation costs charged by B&W Pipeline, LLC ("B&W") as the result of a Federal Energy Regulatory Commission ("FERC") Order, which results in an increase in the cost of gas for Navitas customers by \$45 per Mcf. Navitas recommended that the Commission initiate an emergency rate case with respect to B&W's transportation charge. On September 13, 2019, the Consumer Advocate filed a *Petition to Intervene* and the *Consumer Advocate's Emergency Motion to Revise Fixed Monthly Charge in Tariff*

(“*Emergency Motion*”). In its *Emergency Motion*, the Consumer Advocate sets forth two options for just and reasonable rates and asks for a hearing at the next scheduled Commission Conference. In addition, the Consumer Advocate asks the Commission to consider whether sanctions should be imposed against B&W for seeking a new FERC Order that contravened the Commission’s ruling setting a rate for transportation costs in Docket No. 15-0042. On September 16, 2019, the Consumer Advocate also filed a letter to Navitas stating that Navitas’ concerns will be addressed in the current docket and demanding that it continue to provide gas to its customers and requesting that it not issue notice to its customers at this time concerning discontinuance of gas service. On September 16, 2019, B&W filed the *Proposed Rate Adjustment of B&W Pipeline, LLC* (“*B&W Proposal*”) agreeing that the rates should be reduced as soon as possible and proposing the Commission adopt the FERC rate of \$2.7172 per Mcf. Navitas filed a letter supporting the Consumer Advocate’s intervention on September 17, 2019. In addition, on September 17, 2019, Navitas filed a letter asking the Commission to grant the Consumer Advocate’s *Emergency Motion* and adopt one of the proposed rates set forth in the *Emergency Motion*. The Hearing Officer scheduled a Status Conference with the parties to be held on September 17, 2019 at 2:00 p.m. in the TPUC Executive Conference Room.

SEPTEMBER 17, 2019 STATUS CONFERENCE

The Status Conference was held on September 17, 2019, at 2:00 p.m. and all parties were present. The Hearing Officer first addressed the Consumer Advocate’s *Petition to Intervene*.

Consumer Advocate’s *Petition to Intervene*

On September 13, 2019, the Consumer Advocate filed a *Petition to Intervene* seeking to intervene in the docket pursuant to Tenn. Code Ann. § 65-4-118, which qualifies the Consumer Advocate to represent the interests of Tennessee consumers of public utility services in proceedings before the Commission. The Consumer Advocate maintains that:

[t]he interests of consumers including without limitation, the proposed increase in rates to be paid by the Company's [Navitas] consumers ... be affected by determinations and orders made by the Commission with respect to (i) the interpretation, application, and implementation of Tenn. Code Ann. § 65-5-103 and other and other relevant statutory and regulatory provisions and (ii) the review and analysis of the documentation, financial spreadsheets, and materials provided by the Company.

Further, the Consumer Advocate asserts that only by participating in this docket can it adequately represent the interests of Tennessee consumers. Navitas supported the Consumer Advocate's intervention and there was no opposition to the *Petition to Intervene*.

Findings and 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.¹

Although it is not an automatic or absolute right to participate in proceedings before the Commission, Tenn. Code Ann. § 65-4-118(b)(1) provides a general basis for the qualification of the

¹ Tenn. Code Ann. § 4-5-310(2015).

Consumer Advocate to be permitted to intervene as a party to represent the interests of Tennessee public utility consumers. It provides 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 commission 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 commission.²

Based on the dramatic potential increase in rates and potential loss of gas service for the Navitas customers, the Hearing Officer finds there is a sufficient factual basis to find that the legal rights or interests held by those consumers may be determined in this proceeding.

THEREFORE, upon due consideration, the Hearing Officer concluded that the legal rights, duties, privileges, immunities or other legal interest of Tennessee consumers may be determined in this proceeding. Further, the Hearing Officer found that the Consumer Advocate qualifies under law as an intervenor for the purpose of representing those consumer interests, there is no opposition to its intervention, and its *Petition to Intervene* was timely-filed and should not impair the interests of justice or the orderly and prompt conduct of the proceedings. For these reasons, the Hearing Officer concluded that the Consumer Advocate's *Petition to Intervene* should be granted.

Procedural Schedule

Prior to discussing how to move the docket forward expeditiously, the Hearing Officer verified that Navitas was currently providing gas service to its customers and had not notified its customers that service would be discontinued. Navitas confirmed that it was indeed providing service and did not intend to cease providing service until this matter could be resolved.

After discussing the issues in this docket with the parties, the Hearing Officer determined that two proposals had been presented by B&W and two proposals had been presented by the

² Tenn. Code Ann. § 65-4-118(b)(1)(2015).

Consumer Advocate. The Hearing Officer concluded the parties should file legal briefs on these proposals so that the Commission could establish an interim rate for the price of B&W's transported gas to Navitas. The Hearing on these proposals would be held at the October 14, 2019 Commission Conference.

The Hearing Officer determined that some additional information may be needed to assist the parties in supporting their proposals and ordered B&W to provide a copy of all invoices for all gas transportation services provided by B&W to Navitas and B&W Intercompany from January 2016 to present. Navitas was also ordered to provide all invoices received by Navitas from B&W for gas transportation services from January 2016 to present. Lastly, the Hearing Officer established the following procedural schedule:

| Due Date | Filing/Activity |
|-------------------------|--|
| September 20, 2019 | Parties must advise if they will file testimony |
| September 25, 2019 | Settlement Agreement must be filed. Briefs are still required even if settlement is entered. |
| September 27, 2019 | Briefs on Proposals are due. |
| October 14, 2019 | Target Hearing Date |


IT IS THEREFORE ORDERED THAT:

1. The *Petition to Intervene* filed by the Consumer Advocate Unit in the Financial Division of the Office of the Attorney General is granted. The Consumer Advocate Unit in the Financial 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.

2. Navitas TN NG, LLC shall continue to provide gas service until further order of the Tennessee Public Utility Commission.

3. Navitas TN NG, LLC shall not issue any notice to its customers indicating that their gas service will be discontinued.

4. The Parties shall abide by the Procedural Schedule established herein.


Monica Smith-Ashford, Hearing Officer