

IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

IN RE:)	
INVESTIGATION INTO NAVITAS)	
UTILITY CORPORATION'S NOTICE)	
OF PROBABLE SHUT DOWN AND)	DOCKET NO. 19-00084
DISCONTINUANCE OF TENNESSEE)	
SERVICE)	

DIRECT TESTIMONY

OF

DAVID N. DITTEMORE

September 27, 2019

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AFFIDAVIT

I, David N. D. Dittemore, on behalf of the Consumer Advocate Unit of the Attorney General's Office, hereby certify that the attached Direct Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Advocate Unit.

David N. D. Dittemore
DAVID N. DITTEMORE

Sworn to and subscribed before me
this 27th day of September, 2019.

Terra Allen
NOTARY PUBLIC



My commission expires: 9/28/2022

1 **Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION**
2 **FOR THE RECORD.**

3 **A1.** My name is David N. Dittmore. My business address is Office of the Tennessee
4 Attorney General, War Memorial Building, 301 6th Ave. North, Nashville, TN 37243. I
5 am a Financial Analyst employed by the Consumer Advocate Unit in the Financial
6 Division of the Tennessee Attorney General's Office ("Consumer Advocate").

7 **Q2. PLEASE PROVIDE A SUMMARY OF YOUR BACKGROUND AND**
8 **PROFESSIONAL EXPERIENCE.**

9 **A2.** I received a Bachelor of Science Degree in Business Administration from the University
10 of Central Missouri in 1982. I am a Certified Public Accountant licensed in the state of
11 Oklahoma (#7562). I was previously employed by the Kansas Corporation Commission
12 (KCC) in various capacities, including Managing Auditor, Chief Auditor, and Director
13 of the Utilities Division. For approximately four years, I was self-employed as a Utility
14 Regulatory Consultant representing primarily the KCC Staff in regulatory issues. I also
15 participated in proceedings in Georgia and Vermont, evaluating issues involving
16 electricity and telecommunications regulatory matters. Additionally, I performed a
17 consulting engagement for Kansas Gas Service (KGS), my subsequent employer during
18 this time frame. For eleven years I served as Manager and subsequently Director of
19 Regulatory Affairs for KGS, the largest natural gas utility in Kansas serving
20 approximately 625,000 customers. KGS is a division of One Gas, a natural gas utility
21 serving approximately two million customers in Kansas, Oklahoma and Texas. I joined
22 the Tennessee Attorney General's Office in September 2017 as a Financial Analyst.
23 Overall, I have thirty years' experience in the field of public utility regulation. I have

presented testimony as an expert witness on many occasions. Attached as Exhibit DND-1 is a detailed overview of my background.

Q3. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION (COMMISSION OR TPUC)?

A3. Yes, I have testified before the Commission on a number of occasions.

Q4. WHAT IS THE PURPOSE OF THIS DOCKET?

A4. The purpose of my testimony is to address the background relating to B&W Pipeline, LLC (“B&W”) and Navitas TN NG, LLC (“Navitas”), the implications for ratepayers in Byrdstown, Tennessee, and the appropriate rate to apply in the wake of FERC’s 2019 *Order* in FERC Docket No. PR17-54-00.

Q5. CAN YOU SUMMARIZE YOUR RECOMMENDATIONS IN THIS DOCKET?

A5. Yes. My recommendations are as follows:

1. The substance of the Federal Energy Regulatory Commission (“FERC”) Order dated May 17, 2019, as well as its effective date of July, 2017, have significant implications on the rate design determined by the Commission in TPUC Docket No. 15-00042, and modifications to certain provisions of that Order are therefore required.
2. The FERC Order in Docket PR17-54-00 results in effective rates for a portion of the B&W system with an effective date of July 17, 2017; the Commission should make a change to B&W’s rates with an effective date of October 1, 2019, but at the same time, the Commission should reaffirm its effective volumetric rate in TPUC Docket No. 15-00042 for Tennessee customers for service prior to October 1, 2019.
3. Unique ratemaking treatment is justified in this case due to the small size of the Navitas system in Byrdstown and the implications of a potential B&W rate case.
4. The rate of \$2.06/Mcf is appropriate beginning October 1, 2019, only if coupled with the agreement by B&W not to file a rate case earlier than January 2022, absent extraordinary circumstances.
5. The Commission should strongly encourage B&W to pursue low-cost options to pursue any subsequent rate increase filings with this Commission.

1 **Q6. CAN YOU ADDRESS HOW THE CONSUMER ADVOCATE BECAME AWARE**
2 **OF THE ISSUES IN THIS DOCKET?**

3 **A6.** Our Office became aware of the implications of the FERC Order as a result of a September
4 9, 2019 Notice issued by Navitas and submitted to Commission Staff and the Consumer
5 Advocate. This Notice discussed a probable cessation of natural gas service to Byrdstown
6 customers. Further, the Notice indicated that absent the termination of service, rates to its
7 Byrdstown customers would approximate \$45/Mcf. Our office immediately began
8 reviewing this situation and the implications on Byrdstown customers.

9 **Q7. WHAT IS THE COMMERCIAL RELATIONSHIP BETWEEN NAVITAS AND**
10 **B&W?**

11 **A7.** B&W is the sole transporter of natural gas for the Byrdstown portion of the Navitas system.
12 It is important to recognize that the Byrdstown system is comprised of just eighty-four
13 customers. Also, B&W provides transportation service for Navitas within the State of
14 Tennessee for volumes that are subsequently transported by Navitas to its customer base
15 in Kentucky. It is this latter transaction that led B&W to seeking rates from FERC rather
16 than being under the exclusive jurisdiction of TPUC.

17 **Q8. COULD YOU SUMMARIZE THE RESULTS OF THE LAST B&W RATE CASE**
18 **BEFORE THIS COMMISSION?**

19 **A8.** On March 10, 2016, the Commission issued a Final Order Setting Rates approving a
20 revenue requirement of \$280,835.¹ B&W filed a Petition for Reconsideration, but for
21 purposes of this investigation, it is irrelevant other than for the purpose of establishing that

¹ This revenue deficiency is the sum of the deficiency identified at the top of p. 20 of \$144,118 plus revenues of \$136,717 found on p. 23 of the order in TPUC Docket 15-00042. There is a conflicting revenue deficiency identified on p. 23 of \$114,118, however, we believe the intended revenue deficiency to be \$144,118, based upon the identified rate base, rate of return and operating expenses.

1 this Commission devoted a significant level of review and care to the Final Order Setting
2 Rates. The Commission adopted a two-part rate design including a fixed charge of \$13,897
3 per month to be charged to Navitas as well as a volumetric rate of \$0.3081/Mcf.
4 Importantly, the Commission's determination of these rates was predicated on the volumes
5 associated with both Tennessee and Kentucky.² Further, the Commission concluded that
6 the effective overall rate associated with this two-part rate is \$1.23248/Mcf.³ At the time
7 of the Commission's Order, approximately 75% of the B&W volumes were ultimately
8 consumed by customers located in Kentucky.⁴

9 **Q9. WHAT WAS THE RESULTING RATE APPROVED IN THE FERC DOCKET?**

10 **A9.** The FERC approved rate applicable to Navitas' Kentucky operations was \$2.7172 per Mcf
11 effective July 17, 2017, based upon an order issued by FERC on May 17, 2019.

12 **Q10. WHAT WAS THE IMPLICATION OF THE FERC ORDER ON THE RATE**
13 **DESIGN APPROVED IN TPUC DOCKET 15-00042?**

14 **A10.** The fixed monthly charge of \$13,897 approved by the Commission in Docket 15-00042 is
15 no longer applicable to Kentucky customers as a result of the FERC decision, which is
16 retroactive to July 17, 2017. Thus, absent action by this Commission, arguably the entire
17 fixed monthly charge of \$13,897 could be levied by B&W to Navitas' Tennessee
18 customers. This is an untenable result given there are only eighty-four customers in rural
19 Byrdstown, Tennessee, who would incur this monthly charge, equating to an annual

² "The rate design adopted by the panel is based upon the entire throughput of volumes transported to Navitas, which includes the volumes sold to Kentucky customers." *Final Order Setting Rates*, p. 22, Docket No. 15-00042 (March 10, 2016).

³ *Final Order Setting Rates*, p. 22, TPUC Docket No. 15-00042 (March 10, 2016).

⁴ *Stipulation and Agreement*, p. 2, FERC Docket No. PR17-54-000 (March 21, 2019).

1 monthly cost just for this portion of their natural gas service of \$165.⁵ Stated another way,
2 the assignment of the entire fixed charge to Tennessee would result in a charge per Mcf
3 averaging \$45.⁶ The result of actually passing on these charges in conjunction with the
4 cost of gas and Navitas retail rates would undoubtedly cause many if not all, customers to
5 discontinue service with Navitas, either voluntarily or involuntarily, with cold weather fast
6 approaching.

7 **Q11. WOULD THE EFFECTIVE VOLUMETRIC RATE OF \$1.23248 PER MCF BE AN**
8 **APPROPRIATE RATE TO APPLY GOING FORWARD FOR CUSTOMERS IN**
9 **TENNESSEE?**

10 **A11.** Yes. The \$1.23248 was the intended overall rate per Mcf adopted by this Commission in
11 Docket No. 15-00042. The FERC Order effectively superseded TPUC's intent to spread
12 the \$13,897 customer charge to Kentucky customers with its rates effective July 17, 2017.

13 **Q12. WHY SHOULD THE COMMISSION ADOPT THE \$1.23248/MCF RATE**
14 **EFFECTIVE BACK TO JULY 17, 2017?**

15 **A12.** The Commissions' intended rate of \$1.23248/Mcf was effectively superseded by the FERC
16 Order, which went back in time to establish an effective rate as of July 17, 2017. Navitas,
17 and effectively its Tennessee customers, would be irreparably harmed by exclusively
18 incurring the \$13,897 monthly charge that was intended to be spread to customers in both
19 Kentucky and Tennessee. Therefore, it is important that this Commission re-establish its

⁵ It is important to note that the \$165/monthly charge only relates to transportation costs. It does not include other significant charges such as the actual cost of gas or Navitas' retail charges. We believe this could result in a rolled-in cost per Mcf for Byrdstown customers of approximately \$62/Mcf.

⁶ The \$45/Mcf charge is determined as follows: \$13,897 monthly charge *12 = \$166,764 annual charge. This is then divided by 84 customers to arrive at an average annual customer charge just for B&W transportation of \$1,985 annually. This amount divided by annual Navitas residential customer usage of 43.2 Mcf equates to an average B&W transport charge for Navitas Byrdstown customers of \$45/Mcf.

intended volumetric rate commensurate with the effective date of the FERC rate in order to protect Byrdstown customers from the possibility of harm.

Q13. ARE THERE OTHER FACTORS TO CONSIDER THAT MAY SUPPORT MODIFYING THE EFFECTIVE VOLUMETRIC RATE FROM TPUC DOCKET NO. 15-00042 GOING FORWARD?

A13. Yes. The calculated throughput upon which B&W rates were established in Docket No. 15-00042 was 227,862 Mcf.⁷ However, B&W's actual volumes have declined dramatically. The 2018 volumes, as shown in the B&W annual report submitted to this Commission, are 136,210 Mcf, equating to a decreased throughput of approximately 40%. This is a very significant issue that should be considered by this Commission in establishing a new rate going forward given the unique set of facts in this situation.

Q14. DOES THAT NOT CONSTITUTE SINGLE-ISSUE RATEMAKING?

A14. Yes. Modifying B&W's Commission approved rate solely as a result of a significant change in volumes, while holding other revenue requirement components constant, is an example of single-issue ratemaking. However, in this situation I believe it is appropriate with an important caveat.

Q15. WHY MIGHT UPDATING THE THROUGHPUT TO INCORPORATE 2018 ACTUAL VOLUMES BE APPROPRIATE IN THIS CIRCUMSTANCE?

A15. A decline in the throughput experienced by B&W in 2018 (compared with the billing determinants underlying existing rates) would likely result in an immediate rate case filing, which is certainly within the prerogative of B&W. However, it is important to recall that the impact (*i.e.*, the rate case expense) of a Tennessee jurisdictional rate filing submitted

⁷ Although not stated explicitly in the Commissions' Order, this level of volumes is easily calculated based upon the stated revenue requirement and the overall effective rate identified in the order. See Exhibit DND-2.

1 by B&W would fall to eighty-four Byrdstown customers. While this Office would
2 normally oppose a rate increase supported by a single issue and applied to a revenue
3 requirement determined a number of years ago, we believe it is appropriate in this instance.
4 Regulatory costs alone associated with a litigated rate case could easily total \$50,000 or
5 more. And while the Consumer Advocate does not necessarily believe that all such costs
6 should be borne by ratepayers, we recognize the possibility that all such costs would be
7 built into rates, resulting in a significant, and likely ruinous, increase to the eighty-four
8 affected customers. Our overriding concern is to save Byrdstown ratepayers from incurring
9 significant rate case costs in the near-term. Further, it is likely the result of such a litigated
10 rate case would be a significant rate increase reflecting the greatly reduced throughput of
11 B&W. Therefore, our recommendation is to adopt a rate of \$2.06/Mcf effective October
12 1, 2019, coupled with the agreement by B&W not to file for a rate increase prior to January
13 1, 2022, absent extraordinary circumstances. The \$2.06 rate is calculated on Exhibit DND-
14 2 and simply incorporates the total revenue requirement adopted by the Commission in
15 Docket No. 15-00042 and applies it to the actual 2018 B&W reported throughput,
16 producing an overall effective rate of \$2.06/Mcf.

17 **Q16. YOU REFER TO A MORATORIUM ON RATE CASES. WHY MIGHT THAT**
18 **APPROPRIATE IN THIS SCENARIO?**

19 **A16.** Given the rate increase I am supporting in this Docket, the rate moratorium is a reasonable
20 condition for the Company. Absent this increase, the Company (assuming it sought an
21 increase through a general rate case) would be subject to significant discovery and delay.
22 Thus, it would otherwise be subject to a rate of \$1.23248/Mcf, previously approved in
23 Docket No. 15-00042 – and as recommended to be in effect for the period July 17, 2017,

1 through September 30, 2019. The rate moratorium is advantageous for Navitas' retail
2 customers as it ensures it will not incur substantial rate case costs of B&W in the near-
3 term.

4 **Q17. HAVEN'T YOU ADVOCATED IN THE PAST FOR THIS COMMISSION TO**
5 **REQUIRE COMPANIES TO FILE RATE CASES AFTER A CERTAIN TIME**
6 **PERIOD TO REASSESS THEIR RATE STRUCTURE?**

7 **A17.** Yes. However, in those two situations, the utilities involved had Capital Rider mechanisms
8 and a significant customer base upon which to spread regulatory costs. Those situations
9 are easily distinguishable from the current situation with the impact of rate case costs
10 spread to eighty-four customers.

11 **Q18. IS THIS PROPOSAL STILL IN LINE WITH THE COMMISSION'S**
12 **DETERMINATION IN TPUC DOCKET NO. 15-00042?**

13 **A18.** Yes. The only modification I am proposing is to reflect the reduced throughput as the
14 denominator in establishing new rates from the overall effective rate previously adopted
15 by the Commission. The significant drop in throughput of 40% suggests that the originally
16 intended rate of \$1.23248/Mcf is not sustainable going forward absent a significant
17 increase in volumes.

18 **Q19. IS THIS A JUST AND REASONABLE RATE?**

19 **A19.** Yes, in my view the resulting \$2.06/Mcf is a reasonable rate given the new fact pattern in
20 2018.

21 **Q20. IF THROUGHPUT INCREASES OVER TIME, WILL THE COMMISSION BE**
22 **AWARE OF THE INCREASE AND BE ABLE TO REASSESS B&W'S RATES?**

1 **A20.** Yes. B&W submits quarterly and annual financial information to the Commission which
2 identifies its annual throughput.

3 **Q21. AND IF THE COMMISSION DOES NOT AFFIRM A RATE CASE**
4 **MORATORIUM, WHAT IS THE APPROPRIATE RATE TO APPLY?**

5 **A21.** If the Commission does not affirm a rate case moratorium, the appropriate rate to apply
6 going forward (as well as from July 17, 2017) is the identified overall effective rate of
7 \$1.23248/Mcf.

8 **Q22. DO YOU HAVE ADDITIONAL RECOMMENDATIONS FOR THE**
9 **COMMISSION AS IT RELATES TO FUTURE B&W RATE CASES?**

10 **A22.** Yes. I recommend that the Commission strongly encourage B&W to pursue streamlined
11 rate case procedures designed to minimize rate case costs associated with future rate
12 increase proposals. This is critical given the size of the customer group who would absorb
13 these costs. Our Office reserves the right to challenge any costs deemed excessive,
14 especially in light of the limited size of the system. The Consumer Advocate would
15 welcome the opportunity to work with B&W informally in the future in order to minimize
16 such costs, resulting in a streamlined approach to establishing new rates.

17 **Q23. DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?**

18 **A23.** Yes. I reserve the right, however, to address any new information going forward provided
19 by Navitas or B&W, including the filing of supplemental or rebuttal testimony.

David Dittimore

Experience

Areas of Specialization

Approximately thirty-years experience in evaluating and preparing regulatory analysis, including revenue requirements, mergers and acquisitions, utility accounting and finance issues and public policy aspects of utility regulation. Presented testimony on behalf of my employers and clients in natural gas, electric, telecommunication and transportation matters covering a variety of issues.

Tennessee Attorney General's Office; **Financial Analyst September, 2017 – Current**

Responsible for evaluation of utility proposals on behalf of the Attorney General's office including water, wastewater and natural gas utility filings. Prepare analysis and expert witness testimony documenting findings and recommendations.

Kansas Gas Service; **Director Regulatory Affairs 2014 – 2017; Manager Regulatory Affairs, 2007 - 2014**

Responsible for directing the regulatory activity of Kansas Gas Service (KGS), a division of ONE Gas, serving approximately 625,000 customers throughout central and eastern Kansas. In this capacity I have formulated strategic regulatory objectives for KGS, formulated strategic legislative options for KGS and led a Kansas inter-utility task force to discuss those options, participated in ONE Gas financial planning meetings, hired and trained new employees and provided recommendations on operational procedures designed to reduce regulatory risk. Responsible for the overall management and processing of base rate cases (2012 and 2016). I also played an active role, including leading negotiations on behalf of ONE Gas in its Separation application from its former parent, ONEOK, before the Kansas Corporation Commission. I have monitored regulatory earnings, and continually determine potential ratemaking outcomes in the event of a rate case filing. I ensure that all required regulatory filings, including surcharges are submitted on a timely and accurate basis. I also am responsible for monitoring all electric utility rate filings to evaluate competitive impacts from rate design proposals.

Strategic Regulatory Solutions; 2003 -2007

Principal; Serving clients regarding revenue requirement and regulatory policy issues in the natural gas, electric and telecommunication sectors

Williams Energy Marketing and Trading; 2000-2003

Manager Regulatory Affairs; Monitored and researched a variety of state and federal electric regulatory issues. Participated in due diligence efforts in targeting investor owned electric utilities for full requirement power contracts. Researched key state and federal rules to identify potential advantages/disadvantages of entering a given market.

MCI WorldCom; 1999 - 2000

Manager, Wholesale Billing Resolution; Manage a group of professionals responsible

for resolving Wholesale Billing Disputes greater than \$50K. During my tenure, completed disputes increased by over 100%, rising to \$150M per year.

Kansas Corporation Commission; 1984- 1999

Utilities Division Director - 1997 - 1999; Responsible for managing employees with the goal of providing timely, quality recommendations to the Commission covering all aspects of natural gas, telecommunications and electric utility regulation; respond to legislative inquiries as requested; sponsor expert witness testimony before the Commission on selected key regulatory issues; provide testimony before the Kansas legislature on behalf of the KCC regarding proposed utility legislation; manage a budget in excess of \$2 Million; recruit professional staff; monitor trends, current issues and new legislation in all three major industries; address personnel issues as necessary to ensure that the goals of the agency are being met; negotiate and reach agreement where possible with utility personnel on major issues pending before the Commission including mergers and acquisitions; consult with attorneys on a daily basis to ensure that Utilities Division objectives are being met.

Asst. Division Director - 1996 - 1997; Perform duties as assigned by Division Director.

Chief of Accounting 1990 - 1995; Responsible for the direct supervision of 9 employees within the accounting section; areas of responsibility included providing expert witness testimony on a variety of revenue requirement topics; hired and provided hands-on training for new employees; coordinated and managed consulting contracts on major staff projects such as merger requests and rate increase proposals;

Managing Regulatory Auditor, Senior Auditor, Regulatory Auditor 1984 - 1990; Performed audits and analysis as directed; provided expert witness testimony on numerous occasions before the KCC; trained and directed less experienced auditors on-site during regulatory reviews.

Amoco Production Company 1982 - 1984

Accountant Responsible for revenue reporting and royalty payments for natural gas liquids at several large processing plants.

Education

- B.S.B.A. (Accounting) Central Missouri State University
- Passed CPA exam; (Oklahoma certificate # 7562) – Not a license to practice

**B&W Pipeline Company
Proposed Rate Modification**

Exhibit DND-2

Item	Amount	Source
Commission Approved Revenue Requirement	280,835	TPUC Order Docket 15-00042 issued March 10, 2016, p. 20, line 2 + p. 23 item 8
Divided By: 2018 Volumes	<u>136,210</u>	B&W 2018 Annual Report Filed with TPUC
Proposed Rate Effective October 1, 2019	\$ 2.0618	
Commission Approved Revenue Requirement	\$ 280,835	
Divided by Overall Effective Rate	<u>\$ 1.23248</u>	