BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

December 27, 2019

IN RE:	)	
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INVESTIGATION INTO NAVITAS UTILITY CORPORATION'S NOTICE OF PROBABLE SHUTDOWN AND DISCONTINUATION OF TENNESSEE SERVICE	))))	**DOCKET NO. 19-00084**

FINAL ORDER

This matter came before Vice Chair Kenneth C. Hill, Commissioner Herbert H. Hilliard, and Commissioner David F. Jones of the Tennessee Public Utility Commission (the "Commission" or "TPUC"), the voting panel assigned to this docket, at a regularly scheduled Commission Conference held on October 14, 2019. At the conclusion of the hearing, the Commission changed the rate design previously adopted by the Commission in Docket No. 15-00042 for B&W Pipeline, LLC ("B&W") and imposed a volumetric rate of $1.23248 per Mcf for B&W's intrastate transportation service with an effective date of October 14, 2019.

BACKGROUND

B&W is a fifty (50) mile long pipeline that runs through Pickett, Morgan, and Fentress counties within the State of Tennessee. B&W provides transportation service to Navitas TN NG, LLC, ("Navitas"). Navitas is a small natural gas distributor, which through a Kentucky affiliate, serves customers in Tennessee and across the border in Kentucky. In Commission Docket No. 15-00042, a rate case for B&W, it became apparent that the bulk of the gas B&W supplied to Navitas was ultimately consumed by Navitas customers in Kentucky.[1] Thus, whether B&W was a "Hinshaw" pipeline or was subject to federal jurisdiction despite the fact B&W's pipeline does not cross Tennessee's border into other states became an issue in the 2015 rate case.

This essential question of jurisdiction, first raised at the hearing on the merits in Docket No. 15-00042, cast a shadow of uncertainty over the 2015 rate case proceeding and the appropriate rates and rate design the Commission could order. Both B&W and the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General ("Consumer Advocate") addressed this issue. In post-hearing briefs, the Consumer Advocate and B&W both agreed that B&W did not have Hinshaw status, but that the B&W could request an Order No. 63 certificate from the Federal Energy and Regulatory Commission ("FERC") that would grant Hinshaw-like status. B&W indicated the rate set by the Commission could, if consistent with the rules of FERC, be applied to gas consumed in Kentucky.[2] While addressing the issue of federal jurisdiction, no party proposed a specific Tennessee customer rate design and/or Tennessee specific rate.

As the bulk of the gas B&W supplied to Navitas is ultimately consumed in Kentucky, the Commission concluded that B&W was not a Hinshaw pipeline. As such, B&W was subject to the regulation of FERC.[3] The Commission ordered B&W to apply to FERC for a blanket certificate pursuant to 18 C.F.R. § 284.224 and directed B&W to utilize the Commission's Order and rates in its application for FERC review.[4] The rate design adopted by the Commission in Docket No. 15-00042 was based on throughput volumes and cost elements in both Tennessee and Kentucky. Moreover, the rate design was slanted heavily toward a large fixed monthly rate.

In its Order, the panel stated:

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[1] *In Re: Petition of B&W Pipeline, LLC for an Increase in Rates*, Docket No. 15-00042, *Final Order Setting Rates*, pp. 4-6 (March 10, 2016)

[2] *In Re: Petition of B&W Pipeline, LLC for an Increase in Rates*, Docket No. 15-00042, *Post-Hearing Brief of B&W Pipeline, LLC.*, p. 3 (October 9, 2015).

[3] *In Re: Petition of B&W Pipeline, LLC for an Increase in Rates*, Docket No. 15-00042, *Final Order Setting Rates*, pp. 5-6 (March 10, 2016).

[4] *Id.* at 6.

The panel did not adopt the rates or rate design proposals of either B&W or the other intervening parties. B&W supplies a small amount of gas and it is preferable to design rates where revenues remain relatively constant and shortfalls of revenues due to the volatility of gas usage are minimized. Just and reasonable rates should give the utility the opportunity to achieve the rate of return set by the Authority [Commission]. Under the specific circumstances of this case, designing rates whereby the majority of revenues are generated from a fixed charge would best accomplish these goals.

For these reasons, the panel adopts a rate design comprised of a fixed monthly charge of $13,897 to Navitas and a fixed monthly charge of $3,655 to B&W's other customer, affiliate Rugby Energy, LLC. In addition, the panel adopts a volumetric charge of $0.3081 per Mcf from all customers going forward. The adoption of this rate design results in an effective rate per Mcf of $1.23248.

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. Though the rate design is based on total throughput volumes for both Tennessee and Kentucky, the Authority's [Commission's] jurisdiction applies only to the gas that is delivered to Navitas that is consumed within the borders of Tennessee. Thus, the volumetric rates set here shall apply only to the gas transported by B&W that is consumed in Tennessee. It is the intent of the Authority [Commission], with respect to this decision setting rates, that FERC review, consider and grant B&W's timely application for an Order No. 63 certificate, authorizing the use of the rate set in this Order for all gas transported on B&W's pipeline, whether ultimately consumed in Tennessee or Kentucky.[5]

As discussed in the Commission's *Final Order* in Docket No. 15-00042, it was the intent of the Commission that FERC ultimately adopt the Commission rates to be paid by the customers of Navitas in both Kentucky and Tennessee.

Rate design was not the only issue in the 2015 rate case. In setting just and reasonable rates for B&W, the Commission rejected B&W's proposed acquisition adjustment in rate base. B&W appealed the Commission's decision rejecting the acquisition adjustment to the Tennessee Court of Appeals which affirmed the Commission's ruling.[6]

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[5] *Id.* 21-22.

[6] *B&W Pipeline, LLC v. Tennessee Regulatory Authority*, No. M2016-02013-COA-R12-CV (Tenn.Ct.App.2017).

On March 17, 2017, B&W applied for a blanket certificate from FERC. The certificate was granted on June 15, 2017, pursuant to 18 C.F.R. § 284.224, and the rates established by the Commission were adopted by FERC as B&W's interstate rate.[7] Nevertheless, two years later on May 17, 2019, FERC issued a *Letter Order* establishing a new volumetric rate of $2.7171 per Mcf for B&W's interstate transportation service to apply to Navitas for deliveries of gas for Kentucky customers.[8] FERC's *Letter Order* indicates the federal agency acted upon B&W's request for a federal interstate rate. The FERC interstate volumetric rate that was imposed was the product of an unopposed settlement between B&W and unnamed FERC staff. Among the settlement's provisions was acceptance of an acquisition adjustment in calculating the rate and the retroactive application of the new FERC interstate rate back to July 17, 2017.[9] Navitas and the Consumer Advocate did not participate in B&W's FERC rate proceeding.

PROCEDURAL HISTORY OF THE CURRENT DOCKET

The new FERC volumetric rate had two obvious consequences on Navitas. The first was a direct rate increase on Navitas to be borne by Kentucky customers in the form of the FERC rate. The second was the impact of the new FERC rate on the overall rate design created by the Commission, which served, however unintended, as a significant rate increase on the Tennessee customers of Navitas. On September 11, 2019, Navitas filed a letter with the Commission stating the Byrdstown-Fentress pipeline serving the Tennessee customers of Navitas will be forced to shut down absent an alternative solution, which will result in Navitas discontinuing gas service to its Tennessee customers.

According to Navitas, the tariffed fixed charge of $13,897 per month established by the Commission in B&W's rate case, which formerly applied to all of Navitas's operations prior to the

[7] *B&W Pipeline, L.L.C.*, 159 FERC ¶ 62,297 (2017).
[8] *B&W Pipeline*, LLC, Docket No. PR17-54-000, FERC Letter Order, p. 2 (May 17, 2019); a copy was filed by B&W in TPUC Commission Docket No. 15-00042 on May 24, 2019.
[9] *Id.* at 2.

new FERC rate, would fall squarely on the eighty-four (84) Tennessee customers.[10] Navitas calculated that the cost of gas paid by customers would increase by $45 per Mcf per month. Navitas recommended that the Commission initiate an emergency rate case with respect to B&W's intrastate transportation charge. Navitas further informed the Commission that it would send notice to customers on or by September 16, 2019 of an impending increase in gas costs in order to allow customers the option of securing other energy sources before the onset of winter.[11]

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 set forth two options for adjusting B&W's intrastate rate and requested a hearing at the next scheduled Commission Conference in October. In addition, the Consumer Advocate asked 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. 15-00042.[12]

On September 16, 2019, the Consumer Advocate also filed a letter directed to Navitas stating that the concerns of Navitas 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 intrastate rate should be reduced as soon as possible and proposing the Commission adopt the FERC rate of $2.7172 per Mcf.[13] 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

[10] *Notice of Probable Shutdown and Discontinuation of Service* (September 11, 2019).
[11] *Id.*
[12] *Consumer Advocate's Emergency Motion to Revise Fixed Monthly Charge in Tariff*, pp. 5-7 (September 13, 2019).
[13] *Proposed Rate Adjustment of B&W Pipeline, LLC*, p. 1 (September 16, 2019).

Commission to grant the Consumer Advocate's *Emergency Motion* and adopt one of the proposed rates set forth in the *Emergency Motion*.

POSITIONS OF THE PARTIES

The Hearing Officer held a Status Conference on September 17, 2019, and all parties were present. Navitas indicated it was continuing to provide service and had not advised customers that they should seek an alternative source to natural gas service.[14] The parties, including B&W, recognized that a change in the rate must be made on an expedited basis.[15]

B&W first proposed the adoption of the FERC rate of $2.72 per Mcf on a volumetric basis, but also expressed it was open and supportive of a compromise rate.[16] The Consumer Advocate made two proposals. The first was to scrap the fixed monthly charge and adopt the effective rate of $1.23 per Mcf from the 2015 rate case as a volumetric rate. The second proposed rate was, again, replacing the fixed monthly charge with an "updated" volumetric rate of $2.06 per Mcf.[17] The updated rate was arrived at using throughput volumes from 2018 applied to the other revenue requirements determined by the Commission in the 2015 rate case.[18] B&W and Navitas both indicated support for the Consumer Advocate's "updated" rate of $2.06 per Mcf.[19]

THE HEARING

The Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on October 14, 2019, as noticed by the Commission on October 4, 2019. Participating in the Hearing were:

> B&W Pipeline, LLC – Henry Walker, Esq. Bradley, Arant, Boult, & Cummings, LLP, 1600 Division Street, Suite 700, Nashville, Tennessee 37203.

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[14] Transcript of Status Conference, September 17, 2019, pp. 4-5.
[15] *Id.*at 8-9, 14, and 18.
[16] *Id.* at 14.
[17] David N. Dittermore, *Pre-Filed Direct Testimony*, pp. 6-7 (September 27, 2019).
[18] *Id.*
[19] Commission Conference Transcript, pp. 41-42 (October 14, 2019).

Consumer Advocate Unit – Daniel Whitaker, III., Esq. Office of the Tennessee Attorney General and Reporter, Post Office Box 20207, Nashville, Tennessee 37202-0207.

Navitas TN NG, LLC – H. LaDon Baltimore, Esq., Farris Bobango, PLC, 414 Union Street, Suite 1105, Nashville, Tennessee 37219

Mr. David N. Dittemore provided testimony on behalf of the Consumer Advocate. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

FINDINGS AND CONCLUSIONS

When the Final Order in Docket No. 15-00042 was entered, it was the Commission's intent to establish B&W's rates for transportation of gas to Navitas for both Kentucky and Tennessee customers in an arrangement that would fit under the federal regulatory framework pursuant to 18 C.F.R. § 284.232. The Commission authorized a fixed monthly charge of $13,897 and a volumetric charge of 30.813 cents per Mcf. Since B&W's interstate deliveries of gas to Navitas's Kentucky customers are subject to FERC regulation, the Commission required B&W to apply for a certificate from FERC permitting the Commission to establish the interstate transportation rates. B&W applied for a certificate and FERC entered an order issuing the certificate on June 15, 2017, accepting the Commission's rates for B&W's interstate deliveries to Kentucky.

On May 17, 2019, however, FERC issued a *Letter Order* establishing a new rate for B&W's interstate transportation service retroactively to July 17, 2017. The practical effect of the FERC *Letter Order* is that the transportation rates established by the Commission in B&W's last rate case can no longer be applied to B&W's interstate deliveries to Navitas's Kentucky customers as of July 17, 2017. As such, the rate design built largely around a fixed service charge implemented by the Commission in the 2015 rate case is untenable and unjust for the remaining small number of Tennessee customers.

In this proceeding, the parties initially presented three different proposals regarding the rates to be charged by B&W for intrastate transportation of natural gas over B&W's pipeline to Navitas's Tennessee customers. All three proposals made by the parties include abandoning the fixed monthly charge and moving to a strictly volumetric rate.

The first option, proposed by B&W, is for the Commission to adopt the FERC established rate of $2.71 cents per Mcf ($2.7172/Mcf) as a replacement to the rates established by the Commission in Docket No. 15-00042. The FERC rate is substantially higher than the effective rate of $1.23 per Mcf established by the Commission, more than doubling the rates of Tennessee customers. The rate established by FERC was the result of a settlement between B&W and unnamed members of the FERC Staff. The Commission often accepts settlements on matters before it, including settlements in rate cases. In weighing a settlement, the Commission has the benefit of an underlying evidentiary record and the consensus of the affected parties. Here, the Commission is asked to accept a settlement developed before and with a federal agency. The Commission is asked to accept the settlement with FERC without the benefit of an evidentiary record to weigh the just and reasonableness of its ultimate terms. Moreover, the Consumer Advocate and Navitas are not in agreement with adoption of FERC's rate.

The Hearing panel rejected the FERC rate because it is based on a total cost of service of $381,789, which the Commission has not reviewed in the context of a rate case, and which is approximately 36% more than the $280,835 cost of service found to be reasonable by the Commission in Docket No. 15-00042. Moreover, the panel found that adoption of this FERC rate is unreasonable because it includes recovery of an acquisition premium that the Commission considered and expressly denied in Docket No. 15-00042.

The second option, proposed by the Consumer Advocate and ultimately agreed to by all parties, is for the Commission to adopt an "updated" rate of $2.06 cents per Mcf ($2.0618/Mcf), which is based upon the $280,835 revenue requirement approved in Docket No. 15-00042 and the gas deliveries to Navitas of 136,210 Mcf for the calendar year ended 2018 as reflected in B&W's annual report filed with the Commission. The panel also concluded that this rate proposal should be rejected because it assumes that Navitas is B&W's only customer and that the gas deliveries to Navitas represent the total pipeline throughput, neither of which is clear from the present evidentiary record. For example, counsel for B&W stated at the status conference held in this proceeding that B&W's affiliate, Rugby, is no longer in operation.[20] It must be noted, however, that B&W's March 21, 2019 settlement agreement with FERC forecasts 21,900 MCF of additional interstate billing units to serve its affiliate, Titan Energy. Accordingly, the panel found that it is unclear whether all of B&W's affiliate activities on the pipeline have ceased or when such activities may have ceased. Nor is there any evidence in this record that addresses how any changes in affiliate activities may impact B&W's cost of service. Therefore, the panel concluded that despite agreement among the parties, further analysis is necessary prior to adopting a transportation rate that effectively assigns B&W's total cost of service determined in Docket No. 15-00042 solely to Navitas.

The third option, also initially proposed by the Consumer Advocate, is for the Commission to adopt an effective rate of $1.23 cents per Mcf ($1.23248/Mcf) established in Docket No. 15-00042. The panel found that this rate option should be adopted by the Commission because a volumetric rate of $1.23 per Mcf ($1.23248/Mcf) is sufficient to recover B&W's total cost of service as determined by the Commission in Docket No. 15-00042. Thus, adopting this rate does not change B&W's revenue requirement set by the Commission; it merely changes the rate design methodology for collecting the necessary revenues by eliminating the fixed monthly charge and establishing an equivalent volumetric rate. Adoption of this rate also resolves issues relating to

[20] Transcript of Status Conference, p. 21 (September 17, 2019).

Navitas's allocation of fixed charges between the Kentucky and Tennessee jurisdictions. Should B&W believe that the transportation rates established by the Commission in Docket No. 15-00042 are stale due to changes in affiliate activities or other regulatory lag, it may file a rate case petition with the Commission. Given the small size of B&W's intrastate operation, and in an effort to minimize rate case costs, the panel directed the Commission Staff to assist B&W with a rate review should B&W request such assistance.

Finally, the Hearing panel voted unanimously that the $1.23 per Mcf ($1.23248/Mcf) rate should become effective immediately on a going forward basis effective October 14, 2019. The panel concluded it would not be appropriate to make this rate effective retroactively to July 17, 2017, the date that FERC retroactively established for B&W's interstate transportation service. Even if authorized or contemplated by statute, such extraordinary action would be unnecessary here. B&W's fixed monthly customer charge billed to Navitas has been allocated to Tennessee customers monthly based on a reasonable methodology through Navitas's Actual Cost Adjustment ("ACA"). In accordance with the Commission's Purchase Gas Adjustment ("PGA") Rule, Staff has annually audited B&W's transportation charges passed through to Navitas's Tennessee customers, and the Commission has adopted these charges in its approval of Navitas's annual ACA audits. Therefore, through the PGA mechanism, the panel found that Tennessee customers have paid and will pay their reasonable and appropriate share of B&W's transportation costs billed to Navitas.

On a final note, the roots of this proceeding spring from attempting to have state and federal regulatory schemes work in harmony for two small utilities and their customers. Conflict and extraordinary circumstances can arise with attempting to regulate small utilities that find themselves conducting both interstate and intrastate operations. The action taken here by the Commission was justifiably expedited and was greatly aided by the cooperation of all the parties and their realistic and practical expectations. Be that as it may, it is not the practice of the Commission to set rates or otherwise make adjustments to a rate design at such a quick pace without the formalities of discovery and time necessary to test the veracity of a party's claims. As such, this decision should not be relied upon or construed to indicate the Commission finds wisdom in compressing the rate case process.

IT IS THEREFORE ORDERED THAT:

1. Effective October 14, 2019, the intrastate rate charged by B&W Pipeline, LLC shall be $1.23248 per Mcf.

2. B&W Pipeline, LLC shall file a tariff removing the previous fixed monthly charge of $13,897 to Navitas TN NG, LLC, and fixed monthly charge of $3,655 to B&W's previous customer, affiliate Rugby Energy, LLC. and volumetric rate $0.3081 per Mcf and replacing it with a tariff rate of $1.23248 per Mcf for application to intrastate service.

3. Any person who is aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen (15) days from the date of this Order.

4. 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 (60) days from the date of this Order.

Vice Chair Kenneth C. Hill, Commissioner Herbert H. Hilliard, and Commissioner David F. Jones concur.

ATTEST:

Earl Taylor

Earl R. Taylor, Executive Director