Electronically Filed in TPUC Docket Room on September 13, 2019 at 1:55 p.m.

IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

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

CONSUMER ADVOCATE'S PETITION TO INTERVENE

COMES NOW Herbert H. Slatery III, Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate Unit in the Financial Division of the Office of the Attorney General ("Consumer Advocate"), pursuant to Tenn. Code Ann. § 65-4-118, and respectfully petitions the Tennessee Public Utility Commission ("TPUC" or "Commission") to grant the Consumer Advocate's intervention into this proceeding because consumers' interests, rights, duties, or privileges may be determined or affected by this proceeding.

In addition to its request for intervention, the Consumer Advocate is making a contemporaneously filed *Emergency Motion to Revise Fixed Monthly Charge in Tariff* on the ground that B&W indicates it intends to charge Navitas an additional amount allegedly pursuant to a Federal Energy Regulatory Commission ("FERC") Order that will generate revenue at least equal to the amount B&W is currently charging Navitas under the *Final Order Setting Rates* in TPUC Docket No. 15-00042. Thus, if the current TPUC tariffed rates are not suspended or modified, Tennessee customers will be paying an excessive amount more than the rates envisioned for B&W in TPUC's *Final Order Setting Rates*.

The Consumer Advocate further requests that this matter be brought before the Commission in an expedited manner and, if possible, before the next regularly scheduled TPUC Conference.

For cause, the Consumer Advocate would show as follows:

1. The Consumer Advocate is authorized by Tenn. Code Ann. § 65-4-118 to represent the interests of Tennessee consumers of public utility services by initiating and intervening as a party in any matter or proceeding before the TPUC in accordance with the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 *et seq.*, and TPUC rules.

2. B&W is a public utility regulated by TPUC that owns and operates approximately fifty (50) miles of pipeline in Pickett, Morgan, and Fentress Counties. B&W currently supplies transportation services of natural gas to Navitas, a natural gas distribution company that serves residential, commercial, and industrial consumers.

3. Navitas is a public utility regulated by TPUC and is in the business of operating local gas distribution companies and focusing on rural distribution systems. Its principal office and place of business is located at 3186 Airway Avenue, Suite D, Costa Mesa, California 92626. The Company has a local office located at 605 Sunset Trail, Jellico, Tennessee 37762.

4. On September 9, 2019, Navitas submitted its *Notice of Probable Shut Down and Discontinuance of Tennessee Service* (attached as **Exhibit A**). In the *Notice*, Navitas alleges that B&W received an *Order* from FERC that "will raise the cost of gas by approximately $45 per MCF as 84 customers [in Byrdstown] will be asked to split at minimum $13,897 per month causing customers to cancel their natural gas service." The share per customer of the $13,897 monthly charge is approximately $165 for gas service, which would be in addition to the usual bill. B&W,

in its responses to TPUC Staff's First Data Request, indicates that it intends to continue to apply the $13,897 monthly charge to Navitas' customers.[1]

5. Further, Navitas stated in its *Notice* that it "must immediately advise its customers of this impending spike in cost and suggest the option of finding and securing alternate energy sources to natural gas whether by propane or conversion to all electric."

6. Thus, the Consumer Advocate's Petition to Intervene is intended as a first step to preventing loss of service just prior to cold weather for 84 customers who would otherwise be forced to bear the expense of acquiring a new heating source, and possibly a new cooking source, in a short period of time.

Background to Present Docket

7. On April 2, 2015, B&W filed a general rate case in TPUC Docket No. 15-00042. Two parties requested to intervene in that Docket: The Consumer Advocate and Navitas, another natural gas utility regulated by TPUC that is the only customer of B&W Pipeline.

8. A Hearing on the merits was held before TPUC on September 14, 2015. During the Hearing, and for the first time in the proceeding, "testimony from the parties and responses to questions by the [TPUC] Staff indicated that a portion of the gas B&W delivers to Navitas is ultimately consumed in the State of Kentucky."[2] As a result, a question arose of whether B&W Pipeline qualifies for "Hinshaw" status.[3]

9. The Parties filed post-hearing briefs on the issue of "Hinshaw" status, and while the Parties averred that B&W Pipeline did not qualify for such treatment, the Consumer Advocate and B&W agreed that TPUC could nonetheless "assert jurisdiction as to rates charged for the gas

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[1] B&W's First Data Response to TPUC Staff, No. 5, p. 6 (September 12, 2019).
[2] *Final Order Setting Rates*, pp. 4-5, TPUC Docket No. 15-00042 (March 10, 2016).
[3] "Hinshaw" status, when certain standards are met, allows local distribution pipeline companies served by interstate pipelines to operate without being subject to FERC jurisdiction. *See* 15 U.S.C. § 717(c).

delivered and ultimately consumed in Tennessee pending FERC's consideration of [a] blanket certificate pursuant to 18 C.F.R. § 284.224."[4]

10. On March 10, 2019, TPUC entered a *Final Order Setting Rates*. TPUC ruled:

> Therefore, the panel concludes that as B&W is not a Hinshaw pipeline, the Company must address its status with FERC, specifically by applying for an Order No. 63 certificate exemption pursuant to 18 C.F.R. § 284.224.22. A FERC Order 63 certificate would allow B&W to acquire Hinshaw-like status with FERC and thus authorize the TRA to set rates for all of the gas delivered by B&W to Navitas, including for those volumes consumed by customers in Kentucky. **As part of the application for a blanket certificate, B&W shall utilize this Order and the rate established herein for FERC for review**.[5] (Emphasis added.)

11. In the *Final Order*, TPUC issued a directive for steps B&W needed to take, ordering the following:

> 9. A rate design consisting of a fixed monthly charge of \$13,897 from Navitas TN NG, LLC resulting in revenues of \$210,624. In addition, the [TPUC] set a volumetric charge of \$0.30813 per Mcf from all customers.
>
> 10. B&W Pipeline, LLC shall provide a copy of this Order to the Federal Regulatory Commission in the Company's application for a blanket certificate pursuant to 18 C.F.R. § 284.224.[6]

12. Under TPUC's clear directive, B&W was to file for a blanket certificate from FERC, provide FERC with TPUC's *Order* **and the rates established therein** for FERC's review, and after receiving approval from FERC, operate in accordance with TPUC's decision in TPUC Docket No. 15-00042. In fact, B&W did initially comply with TPUC's directive by filing its

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[4] *Final Order Setting Rates*, p. 5, TPUC Docket No. 15-00042 (March 10, 2016). Under 18 C.F.R. § 284.224(b)(3), FERC's grant of a blanket certificate "will authorize the local distribution company to engage in the sale or transportation of natural gas that is subject to [FERC's] jurisdiction under the Natural Gas Act, **to the same extent that and in the same manner that intrastate pipelines are authorized to engage in such activities** by subparts C and D of this part, except as otherwise provided in paragraph (e)(2) of this section." (Emphasis added.)

[5] *Id.* at 6.

[6] *Id.* at 23.

Application of B&W Pipeline, Inc. for a Limited Jurisdiction Blanket Certificate of Public Convenience and Necessity Pursuant to 18 C.F.R. § 284.224 on March 17, 2017.

13. FERC granted B&W's *Application* on June 15, 2017.[7] In its *Order*, FERC stated

> [u]nder section 284.334 blanket certificate authority, the rates charged by a Hinshaw pipeline may be determined by: (1) electing rates based upon a state-approved transportation rate schedules for comparable service or the methodology used in designed city-gate rates for sales or transportation service; or (2) submitting proposed rates to the Commission for approval. **B&W's [sic] chose to make a rate election based upon the rates approved by the [TPUC]**.[8] (Emphasis added.)

14. While FERC stated B&W could elect to choose between two options for setting rates, B&W had previously litigated a general rate case before TPUC in TPUC Docket No. 15-00042, and TPUC issued its *Final Order* based on the proof presented during that proceeding. To comply with TPUC's decision, B&W was required to utilize TPUC's rates rather than seeking new rates from FERC. And while B&W did initially comply with TPUC's ruling, it later opted to instead seek new rates from FERC in contradiction with TPUC's decision.

15. The turning point in B&W's conduct occurred on July 17, 2017. Rather than complying with TPUC's approved tariffs and the initial FERC *Order* granting a blanket certificate and ratifying TPUC's rates, B&W elected to submit new proposed rates for FERC consideration. These rates are substantially higher than those approved by TPUC and, most importantly, B&W requested to set rates based on B&W's original purchase price of all assets (including both the pipeline and oil and gas wells unrelated to B&W's regulated activities), which was a litigated issue

[7] *See Order Issuing Blanket Certificate of Limited Jurisdiction*, Docket No. CP17-78-000 (June 15, 2017).
[8] *Id.* at 3.

in TPUC Docket No. 15-00042. TPUC, however, had explicitly ruled against B&W concerning its arguments to recover the full purchase price.[9]

16. On March 21, 2019, B&W filed a unilateral settlement agreement in FERC Docket No. PR17-54-00. Only after filing this unilateral settlement agreement did B&W provide notice in the TPUC Docket. This unilateral settlement agreement, and the rates contained therein, was approved by FERC on May 17, 2019.

17. Due to the subsequent FERC *Order* in FERC Docket No. PR17-54-00, the changed circumstances result in TPUC's *Final Order* in TPUC Docket No. 15-00042 generating rates that are not just and reasonable. The TPUC *Final Order* authorized a fixed monthly charge of $13,897. The subsequent FERC *Order* then indicated that no part of the customer charge could be assigned to Kentucky customers, despite the fact that the TPUC approved customer charge was designed based upon customer counts and demand from both the Tennessee and Kentucky portions of the B&W system. The resulting average charge applicable to each of Navitas' 84 residential customers is approximately $165 per month per customer for transportation service alone and exclusive of Navitas' retail rates and the cost of gas. Clearly this level of transportation charges is unjust and unreasonable on its face.

18. On September 12, 2019, in response to a data request issued by TPUC Staff, B&W indicated that it still intended to charge the full $13,897, as well as the volumetric charge, to Navitas' Tennessee customers "until the Commission orders otherwise."[10]

Request for Intervention

[9] *Final Order Setting Rates*, pp. 10-15, TPUC Docket No. 15-00042. B&W sought to overturn this issue on appeal, but the Court of Appeals upheld TPUC's ruling in a unanimous opinion. See *B&W Pipeline, LLC v. Tennessee Regulatory Authority et al.*, No. M2016-02013-COA-R12-CV (Tenn. Ct. App. August 24, 2017).
[10] B&W Responses to TPUC Staff's First Data Request, No. 5 (September 12, 2019).

19. The interests of consumers, including without limitation the proposed increase in rates to be paid by the Company's consumers under the *Petition*, may 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 relevant statutory and regulatory provisions and (ii) the review and analysis of the documentation, financial spreadsheets, and materials provided by the Company.

20. Only by participating as a party in this proceeding can the Consumer Advocate adequately carry out its statutory duty to represent the interests of Tennessee consumers.

WHEREFORE the Consumer Advocate respectfully requests TPUC grant this Petition to Intervene.

RESPECTFULLY SUBMITTED,

Herbert H. Slatery III by [signature]

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

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This the 13th day of September, 2019.

D P Whitaker, III
DANIEL P. WHITAKER III
Assistant Attorney General

ATTACHMENT A

NAVITAS
COMPANIES

19-00084

September 9, 2019

VIA EMAIL AND USPS

David Foster, Division Director
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4th Fl.
Nashville, TN 37243

Daniel Whitaker, Esq.
Office of the Tennessee Attorney General
Consumer Advocate Unit
P.O. Box 20207
Nashville, TN 37202

RE: Notice of Probable Shut Down and Discontinuation of Tennessee Service

Dear Sirs:

On behalf of Navitas TN NG, LLC ("Navitas"), we regret to inform you that the Byrdstown-Fentress pipeline will be forced to shut down resulting in the discontinuation of natural gas service to our customers in Tennessee unless an alternate solution to B&W Pipeline, LLC's ("B&W") FERC Order is presented that does not put our company or our other Tennessee customers at risk. Navitas must transport through B&W in order to supply its customers with natural gas in Tennessee and Kentucky and as such is captive to B&W's charges. In order to remain in business, Navitas must pass along B&W's transportation charge to its customers.

The practical effect of B&W implementing its FERC Order is that B&W's charge will raise the cost of gas by approximately $45 per MCF as 84 customers will be asked to split at minimum $13,897 per month causing customers to cancel their natural gas service. The total usage for these 84 Tennessee customers on the Byrdstown-Fentress pipeline was 32,925 CCF in 2018. This is an untenable situation for Navitas and its customers. As such, Navitas must immediately advise its customers of this impending spike in cost and suggest the option of finding and securing alternate energy sources to natural gas whether by propane or conversion to all electric.

Navitas recommends that the Tennessee Public Utility Commission or Consumer Advocate initiate an emergency rate case with respect to B&W's transportation charge. As winter is fast approaching, time is of the essence. Navitas intends to send written notice to its customers on or by September 16, 2019 unless otherwise directed by your offices. Please contact Thomas Hartline at (714) 242-4064 or via email at thartline@navitasutility.com to discuss this matter further. Thank you.

Sincerely,

Vanessa Novak, Esq.
Navitas Utility Corporation

Cc: Klint Alexander, Esq. (via email)
Don Baltimore, Esq. (via email)
Henry Walker, Esq. (via email)

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EXHIBIT A