IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

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

CONSUMER ADVOCATE'S EMERGENCY MOTION TO REVISE FIXED MONTHLY CHARGE IN TARIFF

COMES NOW the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General ("Consumer Advocate"), pursuant to Tenn. Code Ann. § 65-4-118, and having petitioned to intervene in this Docket, respectfully moves for the Tennessee Public Utility Commission ("TPUC" or "Commission") to suspend and/or modify the fixed monthly charges to Navitas TN LG, LLC ("Navitas") by B&W Pipeline, LLC ("B&W") for service in the Byrdstown, Tennessee area.

The Consumer Advocate makes this emergency motion 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 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. 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.

2. 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."[1] As a result, a question arose of whether B&W Pipeline qualifies for "Hinshaw" status.[2]

3. 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 delivered and ultimately consumed in Tennessee pending FERC's consideration of [a] blanket certificate pursuant to 18 C.F.R. § 284.224."[3]

4. 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

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1 *Final Order Setting Rates*, pp. 4-5, TPUC Docket No. 15-00042 (March 10, 2016).

2 "Hinshaw" status, when certain standards are met, allows local distribution pipeline companies served by interstates pipelines to operate without being subject to FERC jurisdiction. *See* 15 U.S.C. § 717(c).

3 *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.)

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.**[4] (Emphasis added.)

5. 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.
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> 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.[5]

6. 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 *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.

7. FERC granted B&W's *Application* on June 15, 2017.[6] 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].**[7] (Emphasis added.)

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[4] *Id.* at 6.
[5] *Id.* at 23.
[6] *See Order Issuing Blanket Certificate of Limited Jurisdiction*, Docket No. CP17-78-000 (June 15, 2017).
[7] *Id.* at 3.

8. 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.

9. 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 in TPUC Docket No. 15-00042. TPUC, however, had explicitly ruled against B&W concerning its arguments to recover the full purchase price in rates.[8]

10. 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. Moreover, FERC ordered that its decision and new rates be backdated to an effective date of July 17, 2017.

11. As a result of this material change in the terms of service, on September 9, 2019, Navitas submitted its *Notice of Probable Shut Down and Discontinuance of Tennessee Service*.

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[8] *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).

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."

12. Due to the subsequent FERC *Order* in FERC Docket No. PR17-54-00, the unintended impact of TPUC's Order in TPUC Docket No. 15-00042 results in 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 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' eighty-four residential customers is approximately $165 per month, 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.

13. 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."[9]

14. TPUC has two options with respect to establishing rates that are just and reasonable. The first is to simply translate the fixed monthly charge authorized in TPUC Docket No. 15-00042 into a volumetric component, then add this rate to the previously authorized volumetric rate of $0.3081/MCF rate, resulting in an effective overall volumetric rate. TPUC has already identified that its intent in TPUC Docket No. 15-00042 was to adopt an overall effective rate of

[9] B&W Responses to TPUC Staff's First Data Request, No. 5 (September 12, 2019).

$1.23248/Mcf. TPUC could simply modify their previous two-part rate into an overall rate of $1.23248/Mcf.

15. The second option is to recalculate the Tennessee jurisdictional revenue requirement based upon the results of the FERC *Order*, compared with TPUC's overall revenue requirement adopted in TPUC Docket No. 15-00042. This residual Tennessee jurisdictional revenue requirement would be calculated by subtracting the FERC adopted revenue requirement applicable to Kentucky transportation volumes from the total revenue requirement adopted in TPUC Docket No. 15-00042, with the resulting residual amount representing the portion of the B&W revenue requirement attributed to Tennessee jurisdictional customers. Based upon the Consumer Advocate's reading of the *Final Order* in TPUC Docket No. 15-00042, the total system-wide revenue requirement adopted – for natural gas consumed in Tennessee and Kentucky – was $250,835.

WHEREFORE the Consumer Advocate respectfully requests the following:

A. The Commission immediately translate the current fixed monthly charge authorized in TPUC Docket No. 15-00042 into a volumetric component, then simply add this rate to the previously authorized volumetric rate of $.3081/Mcf rate, resulting in an effective overall volumetric rate;

B. In the alternative, the Commission recalculate the Tennessee jurisdictional revenue requirement based upon the results of the FERC *Order*, compared with the Commission's overall revenue requirement adopted in TPUC Docket No. 15-00042;

C. As a means of matching the FERC *Order* obtained by B&W and as required by the public interest, the Commission make TPUC's *Order* in this Docket applicable as of July 17, 2017, the effective date utilized by FERC in paragraph 2(b) of its May 17, 2019 *Order*;

D. The Commission set a Hearing on the merits for this Docket either on or before the next scheduled TPUC Conference;

E. The Commission consider whether B&W's actions in surreptitiously seeking a new FERC Order in direct contravention of the standing TPUC Order in TPUC Docket No. 15-00042 was willful and deliberate and thus worthy of sanctions against B&W; and

F. The Commission grant such further relief that is deemed appropriate.

RESPECTFULLY SUBMITTED,

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This the 13th day of September, 2019.

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