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September 16, 2019

VIA ELECTRONIC FILING

Tennessee Public Utility Commission
502 Deaderick Street
Nashville, TN 37243

In Re: Docket No. 19-00084

Please accept for filing in the above-captioned docket the attached proposal by B&W Pipeline for a rate reduction.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS LLP

By: Henry Walker

HW/ads
Attachment

207335--301001

4840-4825-2582.1

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

IN RE:	)	
Investigation into Navitas Utility	)	
Company's Notice of Probable Shut	)	**DOCKET NO. 19-00084**
Down and Discontinuation of Tennessee	)	
Services	)	

PROPOSED RATE ADJUSTMENT OF B&W PIPELINE, LLC

On behalf of B&W Pipeline, LLC, I am writing in response to the "Notice of Probable Shut Down and Discontinuation of Tennessee Service" sent on September 9, 2019 by counsel for Navitas TN to Mr. David Foster of the Tennessee Public Utility Commission.

In short, B&W Pipeline agrees with Navitas that the pipeline's intrastate rates, which are applicable to gas transported by B&W and consumed by customers located in Tennessee, should be reduced as soon as possible. B&W Pipeline proposes that the Commission adopt the rate of $2.7172 per Mcf recently set by the Federal Energy Regulatory Commission ("the F.E.R.C.") for B&W Pipeline's interstate transportation service. That rate would replace B&W's flat and volumetric charges set by this Commission in Docket 15-00042.

The basis of the federal agency's decision is explained in detail in the "Settlement Agreement" between B&W Pipeline and the F.E.R.C. staff issued on March 21, 2019. (A copy of the Agreement was filed with the Tennessee Commission in Docket 15-00042 that same day.) The Agreement and accompanying schedules describe how the parties arrived at a total, annual cost of service for the pipeline's operations of $381,789 for the twelve-month period ending December 31, 2016. Based on the pipeline's total throughput of 140,507 Mcfs during that same period, the parties agreed to a rate of $2.7172 per Mcf, effective July 17, 2017.[1]

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[1] Total throughput in 2018 was 136,211 Mcfs, about the same as used in the F.E.R.C. Agreement.

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207335-301001

Since the F.E.R.C. rate is based on the pipeline's total operations, it can be adopted by this Commission and immediately applied to B&W's intrastate transportation, which now constitutes only about 10% to 15% of the pipeline's total throughput. This proposal will provide immediate relief to Navitas and its eighty-four Tennessee customers who, as Navitas notes, will likely switch to propane if asked to pay the full amount of B&W's current, intrastate rates. On the other hand, an intrastate rate of $2.7172 per Mcf is well below the comparable cost of propane as shown in the analysis done by the F.E.R.C. staff as part of the B&W Settlement Agreement and attached as an exhibit to the Agreement.

For further background, I am also submitting for the Commission's information six letters filed by B&W Pipeline over the last two months at the Kentucky Public Service Commission. The filings were made in response to various arguments made by Navitas following the issuance of the F.E.R.C. rate order in May, 2019. Navitas tried unsuccessfully to persuade the Kentucky Commission that the F.E.R.C. rate should not apply to gas transported by B&W Pipeline and consumed in Kentucky. In the course of responding to Navitas' claims, B&W Pipeline's letters explain how B&W's rates were set by the Tennessee Commission, how Navitas had been allocating most of those charges to the company's Kentucky operations, how the F.E.R.C. rate superceded the Tennessee rate as applied to interstate transportation and how the F.E.R.C. decision would impact ratepayers. Rather than repeat those details here, I am filing copies of the letters as well as subsequent orders issued both by the F.E.R.C. and the Kentucky Commission rejecting Navitas' position on the applicable rate.

These letters and orders explain how the parties got to this point and, more importantly, provide context that is helpful in understanding why B&W's proposal that Tennessee adopt the

F.E.R.C. rate, at least on an interim basis, is both an efficient and fair way to avoid the possible discontinuance of service to any Tennessee customers.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

By: ______________________________

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Nashville, TN 37203
615-252-2363
hwalker@babc.com
Attorney for B&W Pipeline, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of September, 2019, a copy of the foregoing document was served on the parties of record, via electronic delivery and U.S. Mail, postage prepaid, addressed as follows:

H. LaDon Baltimore
Farris Bobango, PLC
Bank of America Plaza
414 Union Street, Suite 1105
Nashville, TN 37219
dbaltimore@farris-law.com

Henry Walker

4814-3910-8773.1
207335-301001

Henry Walker
hwalker@bradley.com
615.252.2363 direct

Bradley

RECEIVED

JUL 16 2019

PUBLIC SERVICE COMMISSION

July 16, 2019

Gwen R. Pinson, Esq., Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

Re: Case No. 2019-00241
Purchased Gas Adjustment of Navitas KY NG, LLC

Dear Ms. Pinson:

On behalf of B&W Pipeline, LLC ("B&W"), I am writing in response to the "Quarterly Report of Gas Cost Recovery Rate Calculation" ("GCR report") filed on July 8, 2019 by Navitas KY NG, LLC ("Navitas KY").

The GCR report states that the Kentucky Public Service Commission ("KPSC") must determine whether Navitas KY should flow through to its Kentucky customers gas transportation charges based on volumetric rates set by the Tennessee Regulatory Authority (now called the Tennessee Public Utility Commission) or volumetric rates set by the Federal Energy Regulatory Commission ("FERC"). As discussed below, federal law is clear that Navitas KY will be charged the FERC rate, and unless the FERC rate is used to calculate the company's gas transportation costs, Navitas KY will not fully recover those expenses.

Background

B&W provides both intrastate and interstate gas transportation services and operates pursuant to certificates issued by both the Tennessee Commission and the FERC.[1] The Tennessee Commission sets the pipeline's rates for the transportation of gas this is consumed in that state. The transportation of gas that is delivered to Navitas KY and consumed in Kentucky is under the jurisdiction of the FERC. To establish a rate for that service, the FERC's regulations allow B&W either to (1) charge Navitas KY the same rate set by the Tennessee Commission for comparable, intrastate service or (2) file a rate case at the FERC and charge the rate subsequently set by the federal agency. As explained by the FERC in B&W's interstate certification order (at 3, footnote 5):

[1] Although B&W is located wholly within Tennessee, about 80% of the gas transported on the pipeline is delivered to Navitas KY (at a meter located in Tennessee, just south of the Kentucky border) for consumption by Kentucky customers. Because B&W is engaged in the transportation of gas in one state that is consumed in another state, B&W is required to have a certificate from the FERC to transport gas in interstate commerce. The FERC issued B&W a "Blanket Certificate of Limited Jurisdiction" pursuant to 18 C.F.R. § 284.224 on June 15, 2017. A copy of the certification order is attached. B&W also has a certificate from the Tennessee Commission to transport gas that is delivered to Navitas TN NG, LLC and consumed in Tennessee.

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> Under section 284.224 blanket authority certificate, the rates charged by an intrastate pipeline may be determined by (1) electing rates based upon a state-approved transportation rate schedule 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.

If, however, a pipeline elects to file a rate case at the FERC, the pipeline must accept the result, whether it is higher or lower than the state rate, and cannot switch to the state rate. This is discussed further below.

The Tennessee Commission set B&W's current intrastate rates in a final order issued March 10, 2016. In that order, the state commission directed B&W to file with the FERC a copy of the Tennessee rate order which established both a flat, monthly demand rate and a volumetric rate to be charged to Navitas TN for intrastate transportation. (The order may be found on the Tennessee Commission's web-site under docket 15-00042.) While the order acknowledges that the state commission only has jurisdiction to set rates for the transportation of gas that is consumed in Tennessee, the agency wrote that its "intent" was that the FERC grant B&W an interstate certificate pursuant to 18 C.F.R. § 284.224 and that B&W would then apply the Tennessee volumetric rate to both intrastate and interstate transportation. Order at 22. As directed, B&W filed a copy of the Tennessee order with the FERC along with the pipeline's application for a certificate. In the application, B&W stated that it proposed to apply the Tennessee rates to all transportation. When the FERC issued its certification order, however, explaining that B&W could elect to file a rate case at the FERC instead of applying the Tennessee volumetric rate to interstate service, B&W chose the rate case option.

B&W's rate case was filed on July 17, 2017. On March 21, 2019, B&W filed a settlement agreement between the pipeline and the FERC staff. On May 17, 2019, the FERC issued a final order approving the settlement agreement and fixing an interstate transportation rate of $2.7172 per Mcf, which is almost exactly half of the rate the pipeline had requested. The order made the interstate rate effective July 17, 2017. Copies of the settlement agreement and the final rate order are attached. See attachments B and C.[2]

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[2] Copies of all of these documents, including B&W's rate case filing, were filed with the Tennessee Commission and posted on the agency's public web site under Docket 15-00042. Copies were also provided to the Tennessee Consumer Advocate and to Mr. Don Baltimore, counsel for Navitas TN.

Pursuant to the agency's rules of public notice, the FERC published notice of B&W's rate case filing, the settlement agreement and the final order. No one intervened in the rate case, filed any public comments concerning the settlement, or sought rehearing of the final order.

Discussion

In the GCR report, Navitas KY states that it "is of the opinion" that the intrastate rates set by the Tennessee Commission should be used to calculate the charges to be flowed through to its Kentucky customers. That would result in Navitas KY being unable to recover the full amount of its gas transportation costs.

The federal regulations are clear. The FERC granted B&W a "blanket certificate" pursuant to 18 C.F.R. § 284.224. Paragraph (c)(7) of that section states that the pipeline's certificate application must include a "statement of the methodology to be used in calculating rates for services to be rendered, setting forth any elections under § 284.123." Section 284.123 describes the applicant's two rate "elections." Paragraph (b)(1) of that section states that the pipeline may elect to adopt a rate approved by "the appropriate state regulatory agency" for comparable intrastate service. Paragraph (b)(2) states that if the pipeline chooses not to adopt a state rate under paragraph (b)(1), the pipeline shall "apply for Commission approval by order" of the pipeline's proposed rates and must file "information showing the proposed rates and changes are fair and equitable." If the pipeline chooses the second option, it must abide by the result because the rate set by the FERC "supersedes" any state-approved rate. Paragraph (b)(2)(iii) states:

> A Commission order approving or disapproving a transportation rate under this paragraph [the FERC rate case option] supersedes a rate determined in accordance with paragraph (b)(1) of this section [the state rate option]." [Emphasis added.]

The FERC has now issued an order setting a volumetric rate for B&W's interstate transportation of gas to Navitas KY. The Tennessee rate has been superseded. As directed by the FERC order, B&W has filed an interstate tariff that is now in effect. Therefore, B&W no longer has the option of charging Navitas KY the Tennessee volumetric rate.

Conclusion

If Navitas KY is going to recover all of its gas transportation costs, those costs must be calculated based on the $2.7172 per Mcf rate set by the FERC.[3] Under the filed rate doctrine and the FERC's regulations, that is the rate that B&W must charge Navitas KY for interstate transportation.

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[3] Because the FERC rate is effective as of July 17, 2017, Navitas KY owes B&W a substantial arrearage. Although B&W is required by federal law to bill and collect the entire amount, B&W has offered to allow Navitas KY to pay the arrearage over time in order to reduce the impact on Kentucky ratepayers. Navitas KY has not yet responded to that offer.

Since 2015, I have represented B&W in all of the utility's proceedings before the FERC and the Tennessee Commission. This letter responds to the GCR report of Navitas KY but necessarily omits many of the details of all the events that have occurred over the last four years. If you have any questions about these issues, feel free to contact me or Mr. Kent Hatfield, B&W's Kentucky counsel.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS, LLP

Henry Walker

cc: Don Baltimore
Kent Hatfield
Joseph M. Irwin, Sr.
Navitas KY NG, LLC

Henry Walker
hwalker@bradley.com
615.252.2363 direct

Bradley

July 26, 2019

Gwen R. Pinson, Esq., Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

Re: Case No. 2019-00241
Purchased Gas Adjustment of Navitas KY NG, LLC

Dear Ms. Pinson:

I am filing the two, attached documents from the Federal Energy Regulatory Authority ("FERC") in the above-captioned docket to supplement the information in my letter dated July 16, 2019.

The earlier letter describes, in footnote 2, the steps taken by B&W Pipeline and the FERC to notify Navitas KY of the proceeding initiated by B&W Pipeline to obtain a certificate authorizing the interstate transportation of gas from Tennessee to Kentucky and establish a rate for that transportation. See FERC Docket No. CP17-78-000.

During the same time period, Navitas KY also initiated a proceeding at the FERC to expand the company's natural gas distribution facilities across the Kentucky-Tennessee border. See FERC Docket No. CP17-171-000. Attached are two documents from the docket file: The FERC-issued "Notice of Application," publicly announcing the filing of the Navitas KY application and the "Order Determining Service Area," issued June 15, 2017, granting the company's application.

Please note that both the Notice (at p. 1) and the Order (at footnote 2) refer to B&W Pipeline's pending proceeding and the docket number of that proceeding. These references further demonstrate that Navitas KY had actual knowledge of the B&W Pipeline docket at the FERC.

There are no further updates to B&W's filing of July 16, 2019. The pipeline's invoice to Navitas KY for transportation service during May, 2019, which was calculated at the FERC-ordered rate of $2.7172 per Mcf, remains unpaid.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS, LLP

Henry Walker

cc: Don Baltimore
Kent Hatfield
Juan Duran
Joseph M. Irwin

4812-9878-9533.1

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Navitas KY NG, LLC Docket No. CP17-171-000

NOTICE OF APPLICATION

(April 20, 2017)

Take notice that on April 13, 2017, Navitas KY NG, LLC (Navitas), 3186D Airway Avenue, Costa Mesa, California 92626, filed an application, pursuant to section 7(f) of the Natural Gas Act (NGA), [1] requesting that the Commission make a service area determination to allow it to enlarge or expand its natural gas distribution facilities across the Kentucky/Tennessee border without further Commission authorization. Navitas also requests a determination that it qualifies as a local distribution company for purposes of section 311 of the Natural Gas Policy Act of 1978 (NGPA) and a waiver of all accounting and reporting requirements and other regulatory requirements ordinarily applicable to natural gas companies under the NGA and the NGPA, all as more fully described in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at http://www.ferc.gov using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Specifically, Navitas, a Kentucky local distribution company regulated by the Kentucky Public Service Commission and providing natural gas service to approximately 125 customers in Albany, Clinton County Kentucky in the southern portion of the state adjacent to the Tennessee border, request a service area determination to operate across the Tennessee border into Pickett County Tennessee near Byrdstown in order to access a natural gas supply interconnection, the B&W Pipeline, to service its Kentucky customers. Navitas' application is related to B&W Pipeline, Inc.'s application for a limited jurisdiction blanket certificate of public convenience and necessity filed in Docket No. CP17-78-000 on March 17, 2017.

Any questions regarding this application should be directed to Thomas Hartline, Navitas Utility Corporation, 3186D Airway Avenue, Costa Mesa, CA 92626, or call (714) 242-4064, or by e-mail thartline@navitasutility.com.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental

[1] 15 USC § 717, et seq.

assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at http://www.ferc.gov. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Comment Date: 5:00 pm Eastern Time on May 11, 2017.

Kimberly D. Bose,
Secretary.

159 FERC ¶ 62,298
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Navitas KY NG, LLC — Docket No. CP17-171-000

ORDER DETERMINING SERVICE AREA

(Issued June 15, 2017)

On April 13, 2017, Navitas KY NG, LLC (Navitas-Kentucky) filed an application, pursuant to section 7(f) of the Natural Gas Act (NGA),[1] requesting that the Commission make a service area determination to allow Navitas-Kentucky to enlarge or expand its natural gas distribution facilities across the Kentucky-Tennessee border without further Commission authorization. The pipeline receives third-party-owned natural gas supply from the B&W Pipeline LLC (B&W Pipeline)[2] in Tennessee in order to serve customers in Albany, Kentucky. Navitas-Kentucky also requests: (1) a finding that it continues to qualify as a LDC for purposes of section 311 of the Natural Gas Policy Act of 1978 (NGPA)[3]; and (2) a waiver of the Commission's accounting and reporting requirements and other regulatory requirements ordinarily applicable to natural gas companies under the NGA and NGPA.

Navitas-Kentucky's requests are granted since the requested service area determination is consistent with the purpose of section 7(f) to permit a LDC to enlarge or expand its facilities to supply market requirements without further Commission approval. Further, the requested waivers are consistent with those previously granted in similar circumstances.[4]

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[1] 15 USC § 717f(f) (2012).

[2] B&W Pipeline is a Delaware Limited Liability Company authorized to conduct business in Tennessee, and is subject to regulation by the Tennessee Public Utility Commission (TPUC).

[3] 15 U.S.C. § 3301, *et seq.* (2012).

[4] *See e.g., Source Gas Distribution LLC,* 145 FERC ¶ 62,114 (2013), Liberty *Energy (Midstates) Corp.*, 138 FERC ¶ 62,320 (2012), *Piedmont Natural Gas Company, Inc.*, 136 FERC ¶ 62,037 (2011); *Minnesota Energy Resources Corporation,* 134 FERC ¶ 62,296 (2011); *Corning Natural Gas Company*, 133 FERC ¶ 62,029 (2010); and *Michigan Gas Utilities Corporation*, 117 FERC ¶ 62,045 (2006).

Background and Proposal

Navitas-Kentucky is a public utility organized and existing as a corporation under the laws of the Commonwealth of Kentucky. Navitas-Kentucky is subject to regulation by the Kentucky Public Service Commission (PSC). Navitas-Kentucky is engaged in the purchasing of natural gas for distributing and selling natural gas to approximately 125 commercial and residential customers in Albany, Clinton County, Kentucky, adjacent to the Kentucky-Tennessee border. Navitas Assets, LLC is the parent company of Navitas-Kentucky.

Navitas-Kentucky acquired its facility, known as the Albany natural gas utility system, out of bankruptcy from Gasco Distribution Systems, Inc. (Gasco) on or about January 2011. Since 2011, Navitas-Kentucky has been subject to regulation by the Kentucky PSC.

Navitas-Kentucky utilizes its facility exclusively for local distribution to Kentucky residential and commercial customers and receives third-party-owned natural gas supply from the B&W Pipeline facilities on the Tennessee side of the border near Byrdstown, Pickett County, Tennessee. Navitas-Kentucky provides natural gas service to approximately 125 Kentucky customers from the B&W Pipeline interconnection, it serves no customer in Tennessee. Navitas-Kentucky states that it is not interconnected to any interstate pipelines.

In the course of performing corporate due diligence, B&W Pipeline learned that it needs certificate authorization under section 7 of the NGA to transport the gas that it is delivering to Navitas-Kentucky, and that Navitas-Kentucky needs a designated section 7(f) service area including the receipt point in Tennessee where Navitas-Kentucky receives the gas for its direct sales of natural gas to its local distribution customers in Kentucky.[5]

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[5] On March 17, 2017, in Docket No. CP17-78-000, B&W Pipeline requested a blanket certificate under section 7 of the NGA and section 284.224 of the regulations to authorize its transportation of gas that leaves Tennessee. An order on that filing is being issued contemporaneously with this order. To the extent B&W Pipeline's sales for resale to Navitas-Kentucky are still jurisdictional under the NGA and require NGA section 7 certificate authorization, the sales for resale are covered under the blanket marketing certificate granted by section 248.402 of the regulations, 18 C.F.R. § 284.402 (2013). *See, e.g., City of Clarksville, Tennessee*, 155 FERC ¶ 61,184, at P 20 and n. 38 (2016). *See also Shell U.S. Gas & Power, LLC*, 148 FERC ¶ 61,163, at P 36 (2014) (explaining that following the legislative decontrol of prices for most gas sales, the Commission determined there was no longer a need to exercise its jurisdiction over sales other than those by interstate pipelines and therefore adopted section 284.402 of the

In this application, Navitas-Kentucky seeks a service area determination that encompasses its entire Kentucky LDC-certificated service area, including a very small geographic area in Pickett County, Tennessee where the B&W Pipeline interconnection is located.

Navitas-Kentucky states that its facilities in Kentucky will continue to operate as it has been for decades. Navitas-Kentucky states that it does not anticipate any changes in its operations as a result of this service area determination. Navitas-Kentucky asserts that it will continue to operate as usual and be subjected to the same state and local regulatory oversight after it receives the requested service area determination

Interventions

Navitas-Kentucky's application was noticed by publication in the *Federal Register* on April 27, 2017 (82 Fed. Reg. 19,366), with comments, protests, and interventions due on or before May 11, 2017. No protests, motions to intervene, or adverse comments were filed.

Findings

Section 7(f)(1) of the NGA provides:

> The Commission, after a hearing had upon its own motion or upon application, may determine the service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or expand its facilities for the purpose of supplying increased market demands in such service area without further authorization.[6]

The Commission has consistently recognized that section 7(f) service area determinations are appropriate for companies primarily engaged in the business of local distribution of natural gas, but whose facilities cross state lines for certain geographical reasons.[7] Factors considered in determining whether a company qualifies for a service

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regulations to provide for the automatic issuance of section 7 blanket marketing certificates to authorize any persons who are not interstate pipelines to make sales for resale of gas remaining subject to section 7 jurisdiction and to charge negotiated rates).

[6] 15 U.S.C. §717f(f)(1) (2012).

[7] *See, e.g.*, *Piedmont Natural Gas Company, Inc.*, 136 FERC ¶ 62,037 at 64,085 (2011); *Atmos Energy Corporation*, 127 FERC ¶ 62,139 at 64,391 (2009); *Avista Corporation,* 126 FERC ¶ 62,138 at 64,326 (2009); *City of Toccoa, Georgia*, 125 FERC

area determination are whether:

(1) state or local agencies regulate the company's rates;
(2) the company has an extensive transmission system;
(3) authorizing the service area will have a significant effect on neighboring distribution companies; and
(4) the company makes sales of natural gas for resale.

In regards to the first factor, the Kentucky PSC regulates Navitas-Kentucky's retail rates and services. Second, Navitas-Kentucky's distribution system is located in Kentucky and is used exclusively for local distribution. Third, Navitas-Kentucky's requested authorization will have no effect on any other LDC in Tennessee or Kentucky or their customers. Navitas-Kentucky's proposed service area is comprised of its existing Kentucky PSC approved service territory in Kentucky. Finally, Navitas-Kentucky does not anticipate making sales for resale within its service area. Navitas-Kentucky only seeks to receive gas supplies from the B&W Pipeline facilities on the Tennessee side of the state border for its retail Kentucky requirements. Navitas-Kentucky's primary business within its Kentucky service area will be as a natural gas distributor and retail seller of natural gas.

No environmental impact would be involved with the approval of this proposal because no construction is being approved and the facilities at issue have already been placed into operation. Accordingly, no environmental assessment was prepared.

For the reasons stated above, approval of Navitas-Kentucky's request for a section 7(f) service area determination is granted as requested. The service area determination will relieve Navitas-Kentucky of Commission regulations otherwise applicable to the enlargement or extension of its facilities within the service area and the transportation of gas in interstate commerce within the service area.

Navitas-Kentucky requests to be treated as an LDC for the purposes of section 311 of the NGPA and the Commission has previously held that section 7(f) companies should be treated as such.[8] Although Navitas-Kentucky will own pipeline facilities that cross the Kentucky-Tennessee border, it will operate as an LDC within its service area.

Navitas-Kentucky also requests a waiver of the Commission's accounting and reporting requirements and other regulatory requirements ordinarily applicable to natural gas companies under the NGA and NGPA. The requested waivers are consistent with

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¶ 61,048 at P 4 (2008).

[8] *See, e.g.*, *City of Clarksville, Tennessee*, 146 FERC ¶ 61,074, at P 22.

those previously granted in similar circumstances and are granted in this proceeding.[9] No regulatory gap will exist because Navitas-Kentucky will remain subject to the accounting, reporting, and other rules and regulations of the Kentucky PSC. There is no need to duplicate on the federal level requirements already imposed on Navitas-Kentucky by the state regulatory agencies.

Pursuant to 18 CFR 375.308, it is ordered that:

(A) Navitas-Kentucky is granted a service area determination under section 7(f) of the NGA, as described herein and more fully in the application.

(B) Navitas-Kentucky is determined to be an LDC for purposes of section 311 of the NGPA.

(C) Navitas-Kentucky is granted a waiver of reporting and accounting requirements, as well as other rules and regulations under the NGA and NGPA that are ordinarily applicable to natural gas companies.

(D) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order pursuant to 18 C.F.R. § 385.713.

Pamela J. Boudreau
Acting Director
Division of Pipeline Certificates
Office of Energy Projects

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[9] *See, e.g.*, *id. at* P 23; *City of Toccoa*, 125 FERC ¶ 61,048 (2008); and *Kinder Morgan Interstate Gas Transmission LLC*, 94 FERC ¶ 61,078 (2001).

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PURCHASED GAS ADJUSTMENT FILING OF NAVITAS KY NG, LLC	))	CASE NO. 2019-00241

ORDER

On July 8, 2019, Navitas KY NG, LLC (Navitas), filed its quarterly gas cost recovery (GCR) rate report. Navitas presented two options for calculating the GCR rate based on two gas transportation charges from interstate pipeline owner, B&W Pipeline, LLC (B&W). One option applied volumetric rates approved by the Tennessee Regulatory Authority (TRA). The second option calculated the GCR rate for volumetric rates approved by the Federal Energy Regulatory Commission (FERC). Navitas requested that the Commission authorize Navitas to use the TRA-approved rate, but did not set forth any basis for selecting one option over the other.[1]

B&W, based in Tennessee, transports gas that is delivered to Navitas for consumption by Navitas's Kentucky customers. B&W operates as an intrastate pipeline that is subject to TRA jurisdictional authority and as an interstate pipeline that is subject to FERC jurisdictional authority.[2] Pursuant to 18 CFR § 284.123, B&W had the option of either adopting TRA-approved rates for interstate gas transportation costs or

[1] Commission Staff issued a request for information (Staff's First Request) to Navitas that, among other things, requested that Navitas provide its reasoning for selecting one option over the other. Navitas did not file a response to Staff's First Request), which was due July 19, 2019.

[2] B&W's public comment (filed July 16, 2019) at 1.

implementing rates approved by FERC in a rate case. On July 17, 2017, B&W filed a rate case with FERC, who entered a final order on May 17, 2019, establishing a gas transportation rate that was effective as of July 17, 2017. The FERC-approved rate is greater than the TRA-approved gas transportation rate.[3] In a public comment filed with the Commission, B&W argued that the Commission should apply the FERC rate in calculating Navitas's GCR rate because Navitas would not fully recover the gas transportation expense if the GCR rate was based upon the lower TRA-approved rate.[4]

Based upon the case record, the Commission finds that the record is not sufficiently robust to make a determination whether the TRA-approved rate or the FERC-approved rate is the proper rate to apply in the GCR calculation. For that reason, we find that this case should remain open to investigate the proper rate to apply for gas transportation costs in this proceeding. Because the FERC-approved rate is higher than the TRA-approved rate, in order to ensure that Navitas collects sufficient revenue to pay the higher gas transportation charges if required to do so, we approve the use of the FERC-approved rate for calculating the GCR on an interim basis, subject to refund. If, at the conclusion of our investigation, we determine that the TRA-approved rate was the proper rate, Navitas would be required to refund the difference to its customers.

The Commission also finds that the case record is not comprehensive enough to determine that the proposed FERC-approved GCR rate was properly calculated.[5] The FERC-approved GCR rate will be approved as proposed by Navitas on an interim basis

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[3] *Id.* at 2.

[4] *Id.* at 1.

[5] Staff's First Request asked Navitas to provide the spreadsheets used to calculate both options to determine if the GCR rate was calculated accurately. Navitas did not file a response to Staff's First Request, which was due July 19, 2019.

subject to refund. If, at close of the investigation, the interim GCR rate is found to be improperly calculated due to spreadsheet errors including, but not limited to, rounding errors, misuse of functions, or improper cell reference, the difference between interim GCR rate and corrected GCR rate should also be refunded to its customers by Navitas.

After reviewing the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Navitas's FERC rate report includes revised rates designed to pass on to its customers its expected change in gas costs.

2. Navitas's FERC rate report sets out an Expected Gas Cost (EGC) of $7.7163 per Mcf, which is a decrease of $.0163 per Mcf from its previous EGC of $7.7326 per Mcf.

3. Navitas's FERC rate report sets out no Refund Adjustment.

4. Navitas's FERC rate report sets out a current quarter Actual Cost Adjustment (ACA) of $.3828 per Mcf. Navitas's total ACA is $1.3300 per Mcf, which is an increase of $.8247 per Mcf from its previous total ACA of $.5053 per Mcf.

5. Navitas's FERC rate report sets out a current quarter Balance Adjustment (BA) of ($.0128) per Mcf. Navitas's total BA is ($.1082) per Mcf, which is a decrease of $.0051 per Mcf from its previous total BA of ($.1031) per Mcf.

6. Navitas's FERC-approved GCR rate is $8.9381 per Mcf, which is an increase of $.8033 per Mcf from its previous GCR rate of $8.1348 per Mcf.

7. Navitas failed to provide 30 days' notice required for its rates to be effective August 1, 2019, pursuant to its Tariff. Based upon the July 8, 2019 filing date, the earliest date that the proposed rates can be effective is August 7, 2019.

8. The rate set forth in the Appendix to this Order is fair, just, and reasonable, and should be approved for service rendered by Navitas on and after August 7, 2019.

IT IS THEREFORE ORDERED THAT:

1. The TRA-approved GCR rate report proposed by Navitas is denied.

2. The FERC-approved GCR rate set forth in the Appendix to this Order is approved, on an interim basis subject to refund, for service rendered by Navitas on and after August 7, 2019.

3. Within 20 days of the date of entry of this Order, Navitas shall file with this Commission, using the Commission's electronic Tariff Filing System, revised tariff sheets setting out the rate approved herein and reflecting that it was approved pursuant to this Order.

4. This case shall remain open to investigate whether the TRA-approved rate or FERC-approved rate should be used in the GCR rate calculation.

5. The case will also investigate Navitas's compliance with its GCR Tariff.

By the Commission

ENTERED

AUG 06 2019

KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

Gwen R. Pinson

Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2019-00241 DATED AUG 06 2019

The following rates and charges are prescribed for the customers in the area served by Navitas KY NG, LLC. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under the authority of the Commission prior to the effective date of this Order.

RATES per Mcf:

	Base Rate	Gas Cost Recovery Rate	Total
Residential	$ 4.62	$ 8.9380	$ 13.5580
Commercial	$ 3.62	$ 8.9380	$ 12.5580

*Joseph M Irwin
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Costa Mesa, CA 92626

*Navitas KY NG, LLC
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Bradley

August 8, 2019

RECEIVED

AUG 08 2019

PUBLIC SERVICE
COMMISSION

Gwen R. Pinson, Esq., Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

Re: Case No. 2019-00241
Purchased Gas Adjustment of Navitas KY NG, LLC

Dear Ms. Pinson:

On behalf of B&W Pipeline, LLC ("B&W Pipeline" or "B&W"), I am writing in response to the "Data Request Responses of Navitas KY NG, LLC" ("Navitas KY") filed in the above-captioned docket on July 31, 2019. I am writing specifically to point out several misleading statements that, if not corrected, may lead to further confusion in this docket.

I am also writing to comment briefly on the interim Order entered by the K.P.S.C. on August 6, 2019 in this docket.

Background

On June 15, 2017, the Federal Energy Regulatory Commission ("the FERC") granted an application by Navitas KY for an "Order Determining Service Area" under Section 7(f) of the Natural Gas Act, 15 U.S.C. § 717(f)(f).[1] The FERC Order allows Navitas KY to operate as a local gas distribution company under the jurisdiction of the Kentucky Public Service Commission even though the Navitas KY distribution system extends across the Kentucky state line into Pickett County, Tennessee.[2]

On the same day, the FERC also issued an Order under Section 7(c) of the Natural Gas Act granting B&W Pipeline a certificate of public convenience and necessity to transport gas in interstate commerce to

[1] Copies of all the state and federal orders cited in this letter have been filed in this Docket by either B&W or Navitas KY.

[2] In applying for a Section 7(f) service area determination, Navitas KY told the FERC that although the Navitas KY local gas distribution facility extends a short distance into Tennessee where it connects with B&W Pipeline, the Navitas KY facility "is used exclusively for local distribution to Kentucky residential and commercial customers." See FERC Docket CP17-171-000, "Navitas KY NG LLC Abbreviated Application for NGA Section 7(f) Service Area Determination" at p. 2.

That is incorrect. There are six gas customers located in Tennessee receiving service from the Navitas KY distribution system. Since Navitas KY did not inform the FERC of those customers, the FERC Order states erroneously that the designated service area of Navitas KY, though located in two states, is entirely under the jurisdiction of the Kentucky Commission. Federal law states that once a service area determination has been made, the local distribution company "shall be subject to the exclusive jurisdiction of the State commission in the State where the gas is consumed." 15 U.S.C. § 717(f)(f)(2). Therefore, the Tennessee Commission has jurisdiction over that portion of the service area of Navitas KY that is located in Tennessee and the six customers the company serves there.

serve Navitas KY. See 15 U.S.C. § 717(f)(c). As I described in my letter filed July 16, 2019 in this docket and as the K.P.S.C. noted in its August 6 Order, the FERC certification order directed B&W to file proposed rates within thirty days and noted that B&W could either elect "rates based upon a state approved transportation schedules for comparable service" or submit "proposed rates to the Commission for approval." Order at 3, footnote 5. B&W chose the second option and filed proposed rates and supporting documentation on July 17, 2017. Following negotiations between the FERC staff and B&W, the parties eventually agreed to a settlement rate of $2.7172 per Mcf. The FERC approved the parties' settlement in an Order issued May 17, 2019. The FERC approved rate is effective as of July 17, 2017.

<u>Responses of Navitas KY to Data Requests</u>

First, in response to data requests from the KPSC staff, Navitas KY states that the Tennessee Public Utility Commission ("the Tennessee Commission") "ordered B&W to get FERC approval" of the $.31 per Mcf flow rate set by the Tennessee Commission. That is misleading. Here is what the Tennessee Commission (formerly called the Tennessee Regulatory Authority) said:

> "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 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, 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."

That is, the Tennessee Commission set rates for B&W Pipeline that included both a fixed monthly charge of $13,897 to Navitas TN and a volumetric charge of $0.3081 that would apply only to gas consumed in Tennessee. The Tennessee Commission recognized that it had no jurisdiction over gas transported in interstate commerce for consumption in Kentucky but stated its "intent" to have the FERC review and adopt the $.31-per-Mcf volumetric rate and apply it to the transportation of gas to Kentucky.

As directed by the Tennessee Commission, B&W Pipeline filed a copy of the Tennessee Order and, as instructed by the state commission, requested that the FERC authorize the use of the volumetric rate set by Tennessee for all gas transported in the pipeline, including gas consumed in Kentucky.

That, of course, is not what occurred. When the FERC granted B&W's request for an interstate certificate, the FERC Order stated (footnote 5) that the agency's rules allowed B&W Pipeline either to adopt the Tennessee rates for interstate transportation or file a rate case and abide by whatever rate the FERC set. Believing that the Tennessee rates were too low, B&W Pipeline chose to file an interstate rate case; and the FERC, instead of adopting the Tennessee rates as the state commission had requested, found that B&W's annual revenue requirement was higher than determined by the Tennessee Commission and established a volumetric rate of $2.7172 per Mcf that now applies to all interstate transportation.[3]

As also discussed in my July 16 letter, and in the last section of this letter, the FERC's rules state that once the federal agency has determined an appropriate interstate rate, that rate preempts any rate set by a state commission. Even if B&W Pipeline asked again to adopt the Tennessee rates – which B&W would not do – the pipeline no longer has that option. The state rates have been "superceded" by the FERC rate.

Navitas KY further confuses matters by writing, "If it is determined that the BW pipeline FERC ruling supersedes the Navitas FERC Order" then Navitas KY should be able to recover the FERC-ordered rate as "part of the quarterly gas cost." Response 6 at p. 5. Navitas KY implies that the B&W FERC Order and the Navitas KY FERC Order are inconsistent. They are not. The Navitas KY Order simply defines the local service territory of Navitas KY and states that, within that area, Navitas KY may expand its distribution system across the state line without FERC approval but under the jurisdiction of the appropriate state commission. The B&W Order grants an interstate operating certificate to B&W and sets a rate for that delivery of gas to Navitas KY. The service area determination order has nothing to do with B&W's charges for transporting interstate gas. Conversely, the B&W certification order has nothing to do with state regulation of the local rates of Navitas KY. The orders are not in conflict. They address two completely different matters.

Finally, Navitas KY writes that since the Section 7(f) FERC Order states that Navitas KY "will be regulated by the local jurisdiction," B&W Pipeline's flat and volumetric rates set by the Tennessee Commission should apply to gas shipped to Navitas KY. This non sequitur is baffling. Yes, Navitas KY is locally "regulated" by the state commissions regarding the utility's local distribution service to its Kentucky and Tennessee customers, but that bears no relation to the regulation of B&W's interstate transportation rates by the FERC. The basic responsibilities of the FERC and state utility commissions have been well established for three-quarters of a century. States regulate local gas distribution companies; the FERC regulates pipelines that transport gas in interstate commerce. Navitas KY seems to be intentionally conflating the state and federal jurisdictions.[4]

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[3] The FERC rate covers all of B&W's interstate gas transportation and, therefore, the $13,897 flat monthly charge, a large portion of which Navitas KY has been passing through to its Kentucky customers, will be billed entirely to Navitas TN and, subject to the approval of the Tennessee Commission, passed through to the customers of Navitas TN.

[4] At one time, Mr. Thomas Hartline, who wrote the responses to the data requests, had a more accurate understanding of the jurisdiction of the Tennessee Commission and the FERC. After the Tennessee Commission expressed its "intent" to have the FERC review and adopt the $.31 per Mcf volumetric rate set by the Tennessee Commission and apply it to gas consumed in Kentucky, B&W tried to collect those charges from Navitas KY. The Kentucky utility refused to pay them, correctly pointing out that the Tennessee Commission had no authority to set a rate for the transportation of gas consumed in Kentucky.

In a letter dated June 21, 2016 Mr. Hartline explained why Navitas KY would not pay any volumetric charges for gas that crossed the state line.

Interim K.P.S.C. Order

On August 6, 2019, the K.P.S.C. issued an Order in this docket approving Navitas KY's GCA on an interim basis using the FERC rate of $2.7172 per Mcf to calculate the gas transportation costs of Navitas KY. The Order explained that this docket will remain open because the record is not yet sufficiently developed for the Commission to make a final determination as to whether the FERC rate or the Tennessee flat and volumetric rates should be used to calculate those costs. In a footnote, the K.P.S.C. observed that Navitas KY had not responded to a staff data request asking the utility to explain why the utility believed that the Commission should use the Tennessee rates instead of the FERC rate.

As discussed earlier, Navitas KY finally responded to those data requests on July 31, 2019. For the reasons set forth in the body of this letter, Navitas KY's attempt to explain why the Tennessee rates should apply to B&W's interstate transportation service is based on misleading characterizations of the Tennessee and FERC orders and apparent confusion over the respective regulatory roles of the FERC and the state commissions.

B&W Pipeline hopes that after reviewing the Navitas KY responses and this letter, the K.P.S.C. will be able to make a final determination confirming the conclusions of the interim Order. As described on page 3 of this letter, FERC rule 18 C.F.R. §284.123(b)(2)(iii) states that once the federal agency has issued a final order approving a pipeline transportation rate, the FERC rate "supercedes" any state rate that the pipeline might otherwise have elected to use. This rule expressly addresses the issue before this Commission. The Tennessee rates that Navitas KY believes should be used to calculate the utility's transportation costs have been superceded by the FERC rate and B&W Pipeline's interstate tariffs preempt any rate set by a state commission for the same service. I respectfully suggest that the issue of which rate should be used to calculate the transportation costs of Navitas KY has been resolved.

Finally, as the Commission noted in the August 6 Order, the FERC rate is effective as of July 17, 2017. This creates a substantial arrearage which B&W Pipeline is legally required to collect from Navitas KY. The pipeline has offered to accept payment of the arrearage, with interest, over a period of time so as not to unduly burden the distribution company's Kentucky customers. Navitas KY has still not responded. I would urge the Commission to encourage the company to do so.

> "As you correctly point out Navitas is not remitting the volumetric billing for Kentucky customers, nor is it collecting volumetric charges from its Kentucky customers. The Tennessee Regulatory Authority clearly stated they have no jurisdiction over Kentucky customers and that it is incumbent on B&W to file for a receive a tariff covering Kentucky for said volumetric charges. Navitas is not aware of B&W receiving such a tariff from either the Kentucky Public Service Commission or the Federal Energy Regulatory Commission. In our judgment it is unlikely that a Kentucky tariff, when received, will be retroactive."

For that reason, B&W Pipeline, while regularly receiving the flat monthly charge set by the Tennessee Commission has not been paid any volumetric rates on gas shipped to Navitas KY since December, 2015. Although the FERC rate Order is effective as of July 17, 2017, it appears unlikely that B&W will be able to recover those volumetric charges for the period January, 2016 until the effective date of the FERC tariff.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS, LLP

Henry Walker

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RECEIVED

AUG 20 2019

PUBLIC SERVICE
COMMISSION

Bradley

August 19, 2019

Gwen R. Pinson, Esq., Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

Re: Case No. 2019-00241
Purchased Gas Adjustment of Navitas KY NG, LLC

Dear Ms. Pinson:

On behalf of B&W Pipeline, LLC ("B&W Pipeline" or "B&W"), I am filing this response to the letter dated August 8, 2019 from Ms. Vanessa Novak, counsel for Navitas Utility Corporation, in the above-captioned docket. Included with the letter is a request from Navitas KY NG, LLC" ("Navitas KY") asking the Federal Energy Regulatory Commission ("the FERC") to rehear the agency's final decision issued May 17, 2019 in Docket No. PR17-54-000, "Letter Order Pursuant to § 375.307, B&W Pipeline, LLC." In that Order, the FERC set an interstate transportation rate for B&W Pipeline, effective July 17, 2017.

The letter from Ms. Novak implies that the Kentucky Public Service Commission should wait until the FERC rules on the request for rehearing before taking any further action in this docket. For the reasons set out below, I do not think any such delay is necessary.

The request for rehearing was filed pursuant to 18 C.F.R. § 385.713. Subsection (a)(3)(b) of that rule states, "A request for rehearing by a party must be filed not later than 30 days after issuance of any final decision or other final order in a proceeding." Consistent with that rule, the Letter Order issued in the B&W Pipeline case states, "This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2018)."

The B&W order was issued May 17, 2019. Although well aware of the B&W proceeding, Navitas KY chose not to participate in that docket and did not file the request for rehearing until August 7, 2019, well after the 30-day deadline. The rehearing request does not even offer an explanation for the late filing. It is therefore likely that the FERC will summarily deny the untimely request.[1]

Before responding to the arguments raised in the rehearing request, I would first like to clarify how the FERC rate decision will impact customers of Navitas KY.

To understand the impact of the FERC decision on Kentucky customers, it is necessary first to understand what the Tennessee Commission did in 2016 and how Navitas KY and Navitas TN interpreted the Tennessee Order.

[1] B&W will not file an answer to the rehearing petition unless requested by the FERC. Rule § 385.713(d) states the agency "will not permit answers to requests for rehearing."

In an Order issued March 10, 2016, the Tennessee Commission set rates for B&W Pipeline which at that time transported gas for three customers: Navitas TN, its affiliate Navitas KY, and a B&W affiliate called Rugby Energy, LLC. (Rugby Energy no longer exists. The pipeline's sole customers today are Navitas TN and Navitas KY.) The state agency determined that B&W Pipeline's total annual revenue requirement (interstate and intrastate) was $281,834 and set rates that, if paid by all three of the pipeline's customers, were intended to produce that amount. The state set a flat charge of $13,897 per month and a volumetric charge of $0.31 per Mcf to be charged on all gas transported for the two Navitas companies to Tennessee and Kentucky. The flat charges billed to Navitas, which covered about 60% of the pipeline's total revenue requirement, have been paid each month by the parent of the two Navitas companies and, under the supervision of the Tennessee and Kentucky commissions, have been passed through to Navitas customers in Tennessee and Kentucky on a pro rata basis. Navitas TN has also been paying B&W the $0.31 per Mcf volumetric charge on gas that is consumed in Tennessee. Navitas KY, however, has declined to pay the volumetric charge, pointing out that the Tennessee Commission has no authority to set a transportation rate for gas consumed in Kentucky.[2]

Now that the FERC has set a rate for B&W's interstate transportation service, that rate applies to all gas shipped to Navitas KY. Moreover, the FERC rate is effective as of July 17, 2017. This means that Navitas KY will be billed the FERC rate each month, beginning July 17, 2017. To the extent, however, that Navitas KY has already passed through to its Kentucky customers charges for interstate gas transportation during this same period, those amounts will offset in part the impact on customers of applying the FERC rate back to July 17, 2017.

I will now respond briefly to the four arguments raised in the request for rehearing.

Navitas KY continues to claim that the FERC's decision in the B&W rate case is in conflict with the FERC's "Order Determining Service Area" issued June 15, 2017 allowing Navitas KY to operate as a local distribution company in both Kentucky and a small portion of Tennessee. For the reasons explained in my letter of August 8, 2019, the two orders address completely different matters and are not in conflict. One order sets an interstate rate for B&W Pipeline to transport gas for Navitas KY. The other order allows Navitas KY to transport gas within its local retail service area, which straddles two states, without being regulated as an interstate pipeline.

Navitas KY next argues that the FERC rate order "contravenes" the Tennessee rate order of 2016. The federal and state agencies operate in different jurisdictions, of course. As I have previously explained, the FERC has exclusive jurisdiction over interstate transportation and has set a rate for all gas shipped in interstate commerce to Navitas KY and, as the K.P.S.C. concluded in its Order issued August 6, 2109, the FERC-established rate supersedes any rate set by Tennessee.

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[2] Navitas KY was legally correct but also inconsistent since, as explained above, the Kentucky company does pay its pro rata share of the flat, monthly charge set by the Tennessee Commission and passes those charges through to Kentucky customers.

The third issue raised by Navitas KY is that it seems "substantially unlikely" that the FERC would "reach such a dramatically different conclusion from the State of Tennessee."

Navitas KY has apparently not read the Settlement Agreement between B&W Pipeline and the FERC staff, a copy of which can be found both on the FERC website (Docket No. PR17-54-000) and the Tennessee Commission website (Docket No. 15-00042). The Settlement Agreement details how the parties arrived at a total annual revenue requirement for B&W of $381,789. Furthermore, the FERC-approved rate is based on the pipeline's actual throughput of 140,507 Mcfs, while the Tennessee Commission set rates based on projected and unrealized throughput of 227,861 Mcfs, including usage and revenue from a customer that no longer exists.

Even a cursory review of the Settlement Agreement and the attached exhibits demonstrates that the federal agency's staff conducted an exhaustive investigation of B&W Pipeline's rate case filing and arrived at an agreed-upon result that is well supported by the record and about half of what the pipeline had originally requested.

The final point in the request for rehearing is an allegation that B&W Pipeline has "fail[ed] in its obligation to minimize the impact to Navitas customers in this proceeding." The company states that B&W should have been charging Navitas KY the $0.31 volumetric rate "as soon as they were able such that customers could budget and plan." These comments overlook the fact that B&W Pipeline tried to collect the volumetric charge from Navitas KY but, as I have explained, Navitas KY refused to pay it. Had Navitas KY paid it, the arrearage now owed to B&W Pipeline would be significantly less.

In conclusion, the request for rehearing was not timely filed and will likely be summarily denied by the FERC. The federal agency has exclusive jurisdiction over interstate transportation and has set a rate that supersedes any rate set by Tennessee. None of the issues raised in the rehearing request merits reconsideration of the FERC's order nor should those issues raise any concerns at the Kentucky Commission.

Please do not hesitate to contact me if you have any questions about this letter.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS, LLP

Henry Walker

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Don Baltimore
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Bradley

August 30, 2019

Gwen R. Pinson, Esq., Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

Re: Case No. 2019-00241
Purchased Gas Adjustment of Navitas KY NG, LLC

Dear Ms. Pinson:

As directed by this Commission, Navitas KY NG, LLC ("Navitas KY") filed a brief in this docket on August 29, 2019. Instructed to explain why the Kentucky Commission "has the authority to disregard the FERC rate order and adopt the TRA rates," the gas company instead filed a brief that repeats verbatim arguments the company made earlier in a petition for rehearing that was filed both with the Federal Energy Regulatory Authority ("the FERC") and this Commission.

In a letter dated August 19, 2019, I addressed each of the issues raised in the rehearing petition and will not repeat them here except to note – again – that Navitas KY appears neither to understand the jurisdictional parameters of federal and state regulation nor to have read the "Stipulation and Agreement" document which explains how the FERC staff arrived at the FERC-approved, interstate transportation rate.[1]

In addition to repeating the arguments made in the petition to rehear, the brief raises two other issues which I have not previously addressed.

First, Navitas KY states that B&W is required to seek the approval of the Tennessee Public Utility Commission "to implement the new increased transportation charge authorized by FERC." Brief at 10. That is incorrect. The FERC rate applies only to the transportation of gas in interstate commerce that is ultimately consumed by customers of Navitas KY, and there is no requirement that B&W obtain permission for the Tennessee Commission to begin charging the FERC rate.

Second, Navitas asserts without any supporting evidence that if customers are required to pay the FERC transportation charge, they will switch to propane and possibly cause the distribution company to close. That is also incorrect. As shown in the exhibits to the "Stipulation and Agreement," the FERC staff did an analysis of how the $2.7172 per Mcf rate will affect customers in Kentucky. The analysis, which included an examination of natural gas and propane prices every year from 2010 through 2018, shows that natural gas was substantially cheaper than propane in

[1] B&W Pipeline filed a copy of the Stipulation and Agreement in this docket on July 16, 2019.

4837-8467-2931.1

each year, even if customers had been charged the FERC-ordered transportation rate. See Stipulation and Agreement, Attachment C, Schedules 6.1, 6.2, and 6.3.

In conclusion, Navitas KY urges the Commission to "approve the Tennessee rate" instead of the FERC rate. Brief at 11. That request is misplaced. The gas delivered by B&W Pipeline to Navitas KY is in interstate commerce. The applicable rate has been determined by the FERC. There is nothing for this Commission to "approve" other than whether to allow Navitas KY to pass through to its customers the interstate transportation charges that the utility is now required to pay.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS, LLP

Henry Walker

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Bradley

September 16, 2019

Gwen R. Pinson, Esq., Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

Re: Case No. 2019-00241
Purchased Gas Adjustment of Navitas KY NG, LLC

Dear Ms. Pinson:

The attached Order from the Federal Energy Regulatory Commission ("the FERC") was released September 4, 2019. The Order denies on procedural grounds the request of Navitas KY that the federal agency reconsider its decision in the B&W Pipeline rate case.

Although the FERC did not need to go any further, the agency also decided, sua sponte, to correct a "misapprehension of law" on the part of Navitas KY, explaining that B&W Pipeline's Statement of Operation Conditions (i.e., B&W's interstate tariff) applies to the transportation of gas in interstate commerce and that there is no inconsistency between the FERC's decision setting a rate for gas shipped by the pipeline to Navitas KY and the agency's order granting Navitas KY "Local Distribution Company" status under section 7(f) of the Natural Gas Act.

I respectfully submit that the FERC Order should put an end to any further debate as to whether the FERC rate or the Tennessee rate applies to gas shipped via B&W's facilities to Navitas KY for consumption in Kentucky.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS, LLP

Henry Walker

Attachment
cc: Don Baltimore
Kent Hatfield
Juan Duran
Joseph M. Irwin

4835-5581-0724.1

168 FERC ¶ 61,143
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

B&W Pipeline, LLC Docket No. PR17-54-002

ORDER DISMISSING REQUEST FOR REHEARING

(Issued September 4, 2019)

1. On August 9, 2019, Navitas KY NG, LLC (Navitas) filed a request for rehearing of a July 11, 2019 delegated order[1] that accepted B&W Pipeline, LLC's (B&W) unopposed Statement of Operating Conditions (SOC), which was identical to the *pro forma* SOC filed as part of the unopposed Stipulation and Agreement (Settlement) that the Commission approved on May 17, 2019.[2] We dismiss the request for rehearing as procedurally barred, but *sua sponte* clarify the underlying orders.

2. The underlying orders in this proceeding were issued pursuant to the Natural Gas Policy Act of 1978 (NGPA). NPGA § 506(a)(2) only allows the Commission to consider requests for rehearing from persons who are already party to the proceeding.[3] Rule 713(b) of the Commission's regulations contains the same limitation.[4] Any person seeking to intervene to become a party must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure.[5] At no point during the

[1] *B&W Pipeline, LLC*, Docket No. PR17-54-001 (July 11, 2019) (delegated order).

[2] *B&W Pipeline, LLC*, Docket No. PR17-54-000 (May 17, 2019) (delegated order).

[3] 15 USC 3416 (a)(2) (2012).

[4] 18 C.F.R. § 385.713(b) (2019).

[5] 18 C.F.R. § 385.214(a)(3).

two years that this docket was open – during which time the Commission issued three notices inviting interventions[6] – did Navitas seek to intervene.

3. Navitas' request for rehearing does present one misapprehension of law that warrants a *sua sponte* clarification. Navitas argues that by accepting B&W's filing, the Commission "effectively removes Navitas' [Local Distribution Company] status," under section 7(f) of the Natural Gas Act, "and subjects Navitas to FERC regulation and a FERC-imposed rate scheme obtained by a third party (B&W Pipeline, LLC)."[7] This is incorrect. A Statement of Operating Conditions regulates the pipeline, not the shipper. Navitas is only subject to B&W's SOC to the extent that it wishes to ship natural gas in interstate commerce via B&W's facilities. Entities that have Local Distribution Company status under section 7(f) of the Natural Gas Act do not risk their section 7(f) status by becoming shippers, nor do they risk their section 7(f) status by any action that the Commission may take towards an unrelated pipeline's settlement filings.

<u>The Commission orders</u>:

The request for rehearing is dismissed.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[6] Docket No. PR17-54-000, Combined Notice of Filings, July 19, 2017 and Combined Notice of Filings, March 27, 2019. Docket No. PR17-54-001, Combined Notice of Filings, June 11, 2019.

[7] Request for Rehearing at 3.