

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

B&W Pipeline, LLC)
)
v.) **Docket No. 20-00004**
)
Navitas TN NG, LLC)

RESPONSE OF B&W PIPELINE TO MOTION TO DISMISS

On January 9, 2020, B&W Pipeline, LLC (“B&W”) filed a complaint against Navitas TN NG, LLC (“Navitas TN”) asking the Tennessee Commission to resolve a dispute between the two companies. As stated in the Complaint, Navitas TN has sent an invoice to B&W for \$344,515.49, claiming that the invoice is for the purchase of natural gas in July through December, 2017. B&W Pipeline alleges that no such sales occurred, the invoice is fraudulent, and the Defendant knowingly submitted the false invoice in retaliation against B&W Pipeline for trying to collect FERC-ordered, interstate transportation charges from Navitas KY, an affiliate of Navitas TN. B&W asks that the Commission resolve this dispute and, in addition, open a show cause investigation of Navitas TN and impose “substantial penalties including, if appropriate, the revocation of the company’s Tennessee certificate and referral to a district attorney for criminal prosecution pursuant to T.C.A. §§ 65-3-119, 120 and 121.”

On February 4, 2020, Navitas TN filed a “Motion to Dismiss Complaint of B&W Pipeline” on the grounds that (1) the Commission “has no power to decide invoice or billing disputes,” (2) the complaint is “premature” because Navitas TN “has not gone to collections or else [*sic*] attempted to enforce these invoices,” (3) the Commission “has no power to refer billing disputes to the District Attorney’s Office” and (4) there is no “basis in law” for the Commission “to impose

penalties” because Navitas TN “has merely submitted invoices to B&W for regulated natural gas service provided.”

The motion filed by Navitas TN has no merit and should be summarily denied.

In Tennessee, courts considering a motion to dismiss “must construe the complaint liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences.” Pam Webb v. Nashville Area Habitat for Humanity, 346 S.W.3d 422 (Tenn. 2011). As summarized above, B&W has alleged not only that it disputes the invoice for tariffed services presented by Navitas TN but that the Defendant intentionally submitted a fraudulent bill for gas sales that never occurred and did so solely because B&W Pipeline is trying to collect a bill for interstate service from Navitas KY. For purposes of evaluating the Motion to Dismiss, these allegations must be presumed to be true.

The Commission has “general supervisory and regulatory power, jurisdiction and control over all public utilities” (T.C.A. § 65-4-104) and authority to investigate upon complaint “any matter concerning any public utility” (T.C.A. § 65-4-117). It is therefore not surprising that the Tennessee courts have described the agency as having “practically plenary authority over the utilities within its jurisdiction.” Tennessee Cable Television Association v. Tennessee Public Service Commission, 844 S.W.2d 152(Tenn. Ct. App. 1992). There is no question that the Commission has jurisdiction over this Complaint about a disputed invoice submitted by a public utility allegedly for the provision of “regulated natural gas services.” Motion to Dismiss, at 3. Such billing disputes are commonly adjudicated by the Commission. See, for example, AT&T Tennessee Complaint Against Cellular South, Inc. d/b/a C Spire, Docket No. 19-00099, now pending before the agency.

Navitas TN also argues that the Commission has no power “to impose penalties” or “refer billing disputes to the District Attorney General’s Office” because of what is “merely” a billing dispute over an invoice for regulated services. Motion to Dismiss, at 2-3.

To the contrary, state law expressly prohibits a public utility from charging an “unreasonable” rate (T.C.A. § 65-5-104(a)(1)), declares that any utility that “charges . . . more than a just and reasonable rate . . . commits extortion” (T.C.A. § 65-4-122(b)) and provides that such cases shall be prosecuted by the district attorney general at the “recommendation or request” of the Commission. T.C.A. § 65-3-121 and § 65-4-116(a). Such a recommendation is especially appropriate if, as alleged here, a state-regulated public utility, acting supposedly in accordance with its legal obligation to charge and collect its tariffed rates, has knowingly submitted a fraudulent invoice for sales that never occurred. If these allegations are true, the Commission should not only declare the disputed invoice invalid but also impose substantial financial and other penalties including revocation of the utility’s certificate and referral of the matter to the appropriate district attorney general. To put it bluntly, if the facts alleged here do not warrant such penalties, it is hard to imagine what conduct would.

Finally, Navitas TN says the complaint is premature because the company “has not gone to collections” or otherwise tried to “enforce” the disputed invoice.

This argument is also meritless. A customer who receives an illegal utility bill does not have to wait until the utility initiates collection proceedings before filing a complaint. Navitas TN violates the law when it “charges,” “make[s]” or “impose[s]” an unjust and unreasonable rate. See T.C.A. § 65-5-104(a)(1) and T.C.A. § 65-4-122(b). Moreover, Navitas TN, like every regulated utility, has a statutory and common law obligation to charge and collect its tariffed rates without discrimination. See, T.C.A. § 65-5-101. When a regulated public utility bills a customer for a

regulated service, that act is the fulfillment of a legal obligation, not a negotiation tactic, and when the bill is a sham, generated solely to use as leverage in an unrelated matter, the submission of the bill is not “merely” an invoice “for regulated natural gas services” but a civil and criminal offense.

For these reasons, the Motion to Dismiss should be denied.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

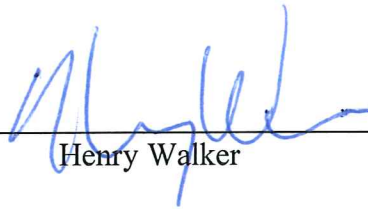
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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of February, 2020, 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:

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