

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE
May 22, 2020**

IN RE:

B&W Pipeline, LLC

v.

Navitas TN NG, LLC

Docket No. 20-00004

**NAVITAS TN NG, LLC ANSWER AND COUNTERCLAIM TO B&W PIPELINE, LLC
COMPLAINT**

**I. ANSWER OF NAVITAS TN NG, LLC TO COMPLAINT OF B&W
PIPELINE, LLC**

Navitas TN NG, LLC (“Navitas TN” or “Navitas”) hereby answers the Complaint (“Complaint”) filed by B&W Pipeline, LLC (“B&W Pipeline” or “B&W”) before the Commission on January 8, 2020. Navitas TN denies the allegations in the Complaint except as specifically and unequivocally admitted herein and denies all titles, headings, footnotes, subheadings, and any other material not contained in numbered paragraphs.

1. Navitas TN has insufficient information to admit or deny the information in paragraph 1 regarding B&W Pipeline. Based on the information available, Navitas TN believes this information to be correct.

2. Navitas TN admits the statements made in paragraph 2 are correct. Navitas TN would also like to supplement paragraph 2 by adding that in the course of normal business, Navitas TN provides natural gas utility services to residential,

commercial and industrial customers. As part of providing service, Navitas TN acquires both the supply and transportation of natural gas from various third parties. B&W Pipeline is a third-party transporter of natural gas for Navitas TN, and, as indicated in their last rate case with the Tennessee Regulatory Authority, B&W and its affiliates are both producers and consumers of natural gas.

3. Navitas TN admits the statements made in paragraph 3 are correct. Navitas TN would like to clarify that beginning September 4, 2019, FERC took the highly unusual step of implementing a retroactive tariff to July 2017.

4. Navitas TN admits the statements made in paragraph 4 are correct. Navitas TN would like to add to sentence 1 of paragraph 4 that Navitas TN and Navitas KY purchase gas from gas producers and/or aggregators.

5. Navitas TN has insufficient information to admit or deny the information in paragraph 5. Regarding sentence 1 of paragraph 5, in the past, Navitas has expressed a desire to purchase gas from other producers along the line, however, B&W has prevented other producers from supplying gas to the pipeline. Navitas TN denies the statements made in sentence 3 of paragraph 5. The commingling of gas from various sources does or does not affect a shipper's obligation to pay transportation charges for the amount of gas delivered by the pipeline is in dispute. Regarding sentence 4 of paragraph 5, B&W is required to provide pipeline quality gas.

6. Navitas TN has insufficient information to admit or deny the information in paragraph 6. However, in relation to the statements made in footnote 3, Navitas TN asks B&W to produce all records of its affiliates gas injection activities from the time

they purchased these systems into the present. Navitas TN also asks B&W to produce all records indicated in footnote 3 related to B&W's Settlement Agreement with FERC.

7. Navitas TN has insufficient information to admit or deny the information of paragraph 7. As Navitas TN understands, B&W is in possession of the records pertaining to the statements made in paragraph 7.

8. Navitas TN denies the statements made in paragraph 8. Whether Navitas companies received the same amount of gas that B&W diverted is not at issue in this matter.

B&W took gas belonging to Navitas TN to enrich themselves, and these actions have caused financial harm to Navitas TN and Tennessee consumers. The gas that B&W has allegedly "returned" to Navitas was not owned or in the control of Navitas. Navitas did not pay nor owe taxes to the government for this gas. Navitas did not pay nor owe royalties to the landowners of the gas. Navitas did not test this gas nor have any obligation to test this gas. B&W has converted Navitas property and are charging Navitas under the guise that a service has been performed to benefit Navitas.

Navitas TN is in the business of selling gas. If an entity uses gas that Navitas has title to, Navitas is entitled to charge the tariff rate for use of the gas. Hidden sales by B&W Pipeline to enrich themselves and their affiliates have denied Tennessee customers the benefit of a lower price per unit.

9. Navitas TN denies the statements made in paragraph 9. Navitas TN believes FERC's clarifying order indicates that the FERC rate applies to the title holder of all gas transported by B&W. Regarding sentence 1 of paragraph 9, it is Navitas TN's understanding that the final effective date was September 4, 2019.

10. Navitas TN denies the statements made in paragraph 10. The arrearage referenced in sentence 2 of paragraph 10 is approximately \$240,000, not \$340,000 as indicated by B&W. Navitas TN would also like to note that the alleged arrearage in question has two components: first, from July 2017 to January 2019, and then second, from February 2019 going forward.

11. Navitas TN admits the statements made in paragraph 11 are correct. B&W did not purchase gas from Navitas; they took it for their own enrichment. B&W Pipeline is not an LDC, and B&W's actions in diverting Navitas gas has violated B&W's Statement of Operating Conditions and deprived Navitas TN of their livelihood as an LDC.

12. Navitas TN denies the statements made in paragraph 12. B&W have allowed their affiliate to remove gas belonging to Navitas TN. B&W has a legal obligation to protect Navitas gas and have failed to do so. In this instance there was no prior consent requested by B&W to remove Navitas gas, no notice was given to Navitas TN before removal began and there was no metering or adherence to industry standards of conduct regarding metering or established customer accounts. As a result of B&W's activities, Navitas experienced a loss of sales due to the unexpected curtailment.

13. Navitas TN has insufficient information to admit or deny the information in paragraph 13 regarding sentences 1 and 2. Navitas TN would like the meter records indicated in sentence 1 of paragraph 13. Regarding sentence 2 of paragraph 13, whether B&W returned the gas to Navitas TN is not relevant to the fact that by using gas Navitas has title to, Navitas has the right to charge for the gas used under Navitas' tariff. Navitas TN denies the statements made in sentence 3 of paragraph 13. Due to B&W's

actions in allowing their affiliate, Rugby, to use Navitas gas without permission and the steps that B&W took to fail to disclose the use of Navitas gas, the only metering data available to Navitas is that provided to us by the East Tennessee Pipeline. Had B&W informed Navitas about B&W's affiliates use of Navitas gas, Navitas could have taken steps to install the appropriate metering facilities in advance.

14. Navitas TN denies the statements made in paragraph 14. Had B&W notified Navitas about the use of Navitas' gas, Navitas TN could have installed appropriate metering facilities that would have provided accurate data regarding the amount of gas used.

15. Navitas TN denies the statements made in paragraph 15. Rugby is an affiliate of B&W. B&W served as the gatekeeper to all those given access to Navitas gas. At best B&W was negligent in their duty to protect Navitas' gas and at worst B&W has taken Navitas' gas with no intention to reveal their use or else compensate Navitas for its use. This is further illustrated by the fact that Navitas only became aware of B&W's activities due to experiencing a pressure drop to Navitas' system. It was this pressure drop that alerted Navitas to B&W's activities diverting gas from the East Tennessee Pipeline.

If Rugby did "purchase" 11,811 Mcfs of Navitas gas as B&W alleges in paragraph 15, Navitas would request B&W produce information showing by what authority B&W Pipeline was permitted to divert Navitas gas for Rugby's benefit and who authorized such sale.

16. Navitas TN denies the statements made in paragraph 16. B&W admits in Paragraph 15 of their Complaint that they have allowed Rugby unauthorized use of

Navitas' gas.¹ B&W diverted Navitas gas to Rugby and that gas was used by them in their operations. Further, B&W have admitted they used some of Navitas gas in their gas flooding operations. B&W seems to intimate this amount was inconsequential. However, if the amount was inconsequential then the system would not have experienced a pressure drop significant enough to alert Navitas to B&W's actions in diverting gas from the East Tennessee Pipeline. The issue is not whether B&W supplied identical gas, but rather that B&W's affiliate used gas owned by Navitas to enrich themselves without payment to Navitas and that B&W's use of Navitas gas resulted in loss of sales.

17. Navitas TN denies the statements made in paragraph 17. However, Navitas TN does not dispute B&W's point that B&W took Navitas' gas for their own enrichment and without prior authorization. By B&W alleging misuse of Navitas' tariff, they have de facto admitted Navitas' right to charge their tariff for the gas B&W used. After Navitas noted the lack of delivery pressure to their system, inquiries were made to B&W Pipeline personnel Frank Cash and Marcello Recchia, both of whom agreed that it was B&W's gas flooding operations by where B&W used natural gas to enhance the flow of oil in their production fields.

18. Navitas TN denies the statements made in paragraph 18. Regarding sentence 4 of paragraph 18, Navitas TN would like to note that it is of no consequence to this matter what Navitas does with its money.

19. Navitas TN denies the statements made in paragraph 19. In their Complaint, B&W admits that their affiliates used Navitas gas for its operations in order

¹ See B&W Complaint at 7

to enrich itself.² B&W is the gatekeeper to Navitas' gas and has a legal obligation to protect it.

20. Navitas TN denies the statements made in paragraph 20. Navitas owns the gas and has a tariff that is charged when parties use its gas. Here, B&W used Navitas' gas and Navitas issued invoices for the period of use. The misappropriation of natural gas is a serious offense of grave importance to the Commission, which is why at the time of issuance of the invoices to B&W, the Commission also received copies of these invoices. Navitas' calculations of the amount of gas used was determined to the best of their abilities in light of B&W electing to remove the gas without consent and without any intention to notify Navitas or otherwise fairly compensate Navitas TN.

Referral to the District Attorney's Office is not permitted by law in a civil dispute and claim. Previously B&W had billed Navitas companies for approximately \$593,000. While Navitas disputed the amount, which was later determined to be found in the amount of no more than approximately \$330,000, Navitas did not threaten B&W with criminal and civil action or else bring forth frivolous complaints to the Commission in an attempt to intimidate or damage B&W's standing with the Commission or the communities they serve.

II. STATEMENT OF FACTS

1. In or about July 2017, Navitas TN noted a lack of delivery pressure to their system and made inquiries to Frank Cash and later Marcelo Recchia, both employees of B&W Pipeline, about the cause. Both Mr. Cash and Mr. Recchia agreed the cause of the pressure drop was B&W's use of the natural gas to enhance the flow of

² See B&W Complaint at 5, 7

oil in their production fields in their gas flooding operations. Mr. Cash and Mr. Recchia indicated that B&W were using Navitas gas off the East Tennessee Pipeline for these gas flooding operations.

2. Navitas only became aware of B&W's activities due to experiencing a pressure drop to Navitas' system. B&W Pipeline had not informed Navitas TN of this use nor established a customer account in order to meter these activities. B&W Pipeline's actions curtailed Navitas' supply of gas and as a result Navitas lost sales.

3. B&W's unauthorized gas use resulted in loss of an estimated 46% of sales for the month of July.

4. In consideration of Navitas and B&W's long standing relationship, an oral agreement was reached between Thomas Hartline and Marcello Recchia whereby B&W would scale back the flooding operations and replace the gas in kind with no additional charges and in exchange Navitas TN would allow the use of their gas off the East Tennessee Pipeline.

5. B&W breached this agreement when they invoiced Navitas under the new transmission tariff authorized by FERC. This breach of agreement lead Navitas to invoice B&W Pipeline for natural gas services rendered during the period of performance under the agreement, July 1, 2017 through December 31, 2017.

6. In its Complaint, B&W argue that the quantity of gas used by their affiliate cannot be known with certainty, thereby arguing that B&W's failure to adhere to industry standard practice of metering gas delivers should prohibit Navitas TN from charging them.

7. Navitas TN is an LDC regulated in Tennessee and has the legal right to charge for natural gas services it provides. As with any matter where natural gas belonging to Navitas is taken prior to creating a customer account or metering, Navitas estimated the amount of gas used by the best means available.

8. Due to B&W actions in allowing their affiliate, Rugby, to use Navitas' gas without permission and the steps B&W took to fail to disclose the use of Navitas' gas, the only metering data available to Navitas is that provided to us by the East Tennessee Pipeline. This led Navitas TN to determine the amount owed by B&W Pipeline to be \$344,515.48.

III. COUNTERCLAIM

Navitas TN NG, LLC ("Navitas TN" or "Navitas"), hereby files this Counterclaim against B&W Pipeline, LLC ("B&W Pipeline" or "B&W") and states as follows:

AN ORAL CONTRACT EXISTS BETWEEN THE PARTIES AND, IN ADDITION OR ALTERNATIVELY, RELIEF FOR NAVITAS TN NG, LLC SHOULD BE FOUND UNDER THE THEORY OF QUANTUM MERUIT

9. An oral contract was made between the parties. Testimony and evidence to that effect will be presented to the Commission. However, should the contract be found to be invalid or unenforceable, the Court may impose a contractual obligation when a party will be unjustly enriched absent a quasi-contractual obligation.³

10. A quantum meruit action is an equitable substitution for a contract claim pursuant to which a party may recover for the reasonable value of goods and services provided to another party if the following circumstances are shown:

³ *Castelli v. Lien*, 910 S.W.2d 420 (Tenn.Ct.App.1995)

- a. There is no existing, enforceable contract between the parties covering the same subject matter;
- b. The party seeking recovery proves that it provided valuable goods or services;
- c. The party to be charged received the goods or services;
- d. The circumstances indicate that the parties to the transaction should have reasonably understood that the person providing the goods or services expected to be compensated;
- e. The circumstances demonstrate that it would be unjust for a party to retain the goods or services without payment.⁴

11. If the oral agreement made between Thomas Hartline and Marcello Recchia is unenforceable or, if as stated in B&W's Complaint against Navitas, no one can recall such an agreement ever occurring, in the alternative Navitas seeks recovery under the theory of quantum meruit.

12. Marcelo Recchia and Frank Cash agreed that the curtailment of gas noted by the pressure drop experienced in July 2017 was a direct result of B&W diverting Navitas gas for B&W's gas flooding operation. The totality of the gas diverted from Navitas can be understood through filings B&W made with the state for their gas flooding operations and the payments made to landowners as royalties. Currently, due to B&W's failure to set up a customer account that would allow metering, Navitas' only source of information as to the amount of gas used is provided to Navitas by the East Tennessee Pipeline. It was also represented to Navitas that B&W needed to match the

⁴ *Id.* See also, *Swafford v. Harris*, 967 S.W.2d 319 (Tenn.1998)

taking of the Navitas gas from the East Tennessee Pipeline with the production of gas by the B&W affiliate in order to maintain delivery pressure.

13. Navitas TN is an LDC regulated by Tennessee. B&W cannot simply take gas from Navitas without payment or prior consent and it is appropriate for Navitas to charge their approved tariff rate that was in place at the time of delivery. B&W is not ignorant of the fact that an LDC would still request compensation from an entity who has diverted their gas without consent.

14. B&W Pipeline took Navitas TN's gas without permission or consent. Navitas is particularly concerned that they only became aware of the taking due to the curtailment they experienced in July 2017. Had Navitas not noted the drop in pressure they may never have become aware of B&W's actions in diverting Navitas gas. Failure to compensate Navitas for the use of their gas would amount to theft for interfering with Navitas' right to charge their tariff.

B&W PIPELINE, LLC'S VIOLATION OF § 65-28-103(a) AND § 65-35-102(3) HAVE CAUSED HARM TO NAVITAS TN NG, LLC AND TENNESSEE CONSUMERS

15. Through their intentional acts and omissions B&W Pipeline has failed to conduct itself to the standards set forth by TPUC and within the law as set forth by Tennessee Code.

16. Under § 65-28-103(a), B&W Pipeline is charged with all duties, responsibilities and liabilities imposed upon public utility corporations by the laws of the state of Tennessee and is subject to the Tennessee Public Utility Commission regulations.

17. B&W Pipeline took Navitas gas in order to enrich themselves and in doing so have caused financial harm to both Navitas TN and Tennessee consumers by causing loss of sales and denying consumers the benefit of such additional sales.

18. T.C.A. § 65-35-102(3) states that it is unlawful to obtain or attempt to obtain by use of any fraudulent scheme, device, means or method, gas service, with intent to avoid payment of the lawful price, charge or toll therefor, or for any person to cause another to avoid such payment for such service.

19. No notice was given to Navitas TN before removal began. B&W Pipeline was not given prior consent to take Navitas gas and there was no metering or adherence to industry standards of conduct regarding metering or establishing customer accounts. Navitas only became aware of B&W's activities due to experiencing a pressure drop to Navitas' system. It was this pressure drop that alerted Navitas to B&W's activities diverting gas from the East Tennessee Pipeline.

20. B&W has converted Navitas gas for their own enrichment and are charging Navitas under the guise that a service has been performed to benefit Navitas.

21. B&W Pipeline served as the gatekeeper to Navitas gas and those given access to it. B&W had a legal obligation to protect Navitas gas and by allowing their affiliate to use gas owned by Navitas to enrich themselves without payment to Navitas and without prior notice or consent, B&W has intentionally and knowingly committed fraud and theft against Navitas TN in violation of T.C.A. § 65-35-102(3).

**B&W PIPELINE, LLC'S ACTIONS TOWARDS NAVITAS TN NG, LLC VIOLATED
B&W'S STATEMENT OF OPERATING CONDITIONS**

22. As B&W has pointed out in their Preliminary Statement, B&W is an intrastate pipeline.⁵ B&W diverted gas belonging to Navitas TN and either gave away or sold it to their affiliate. B&W is not an LDC and had no such authority to appropriate Navitas TN's livelihood and convert their property.

23. Section 6.4 of B&W's SOC sets forth that B&W Pipeline will accept as valid requests which in their judgment are sufficiently specific with respect to the criteria set out in that same section.⁶ The criteria under Section 6.4 were not met such that a reasonable person would understand there to be a request by Navitas TN.

24. Navitas TN made no such requests to B&W. B&W's actions in diverting Navitas gas for B&W's gas flooding operation was done without Navitas' knowledge or consent and led to Navitas experiencing a curtailment that led to loss sales for the month of July 2017. Navitas did not at any point request that gas be delivered on Navitas' behalf to B&W's affiliate Rugby, nor has Navitas received proceeds from the transaction.

25. Section 6.10 of B&W's SOC states that B&W has the right to curtail for reasons of force majeure or when capacity or operating conditions so require, or else when necessary to make modifications, repairs or operating changes to its system.⁷ Section 6.10 also states that B&W will provide Shippers notice of curtailment. None of the above events described in Section 6.10 of B&W's SOC occurred such to cause B&W to have the right to curtail Navitas TN. Further, Navitas TN never received notice of curtailment from B&W.

⁵ B&W Statement of Operating Conditions at 2

⁶ B&W Statement of Operating Conditions at 9

⁷ B&W Statement of Operating Conditions at 15

26. Under Section 6.13 of B&W's SOC, the Shipper is deemed to be in control and in possession of the gas prior to such gas being delivered to Transporter.⁸ Clearly Navitas TN was in control and possession of the gas they owned when B&W took steps to divert Navitas gas for their own enrichment. No consensual delivery was made to B&W or its affiliates on behalf of or by Navitas TN.

27. Section 6.17(E) requires a mandatory arbitration under the Rules of the Center for Public Resources Institute for Dispute Resolutions in the event that B&W and a Shipper are "unable to resolve any dispute regarding the application or interpretation of any provision of a Transportation Service Agreement or related transaction".⁹ Billing disputes such as the oral agreement made between Navitas and B&W certainly fall under this provision. Instead of adhering to their dispute resolution clause, B&W threatened to file a complaint with the Commission should Navitas TN fail to withdraw their invoices for gas purchases by the close of business on December 16, 2019.¹⁰

DAMAGES

Pursuant to T.C.A. § 65-35-104, any person violating the provisions of T.C.A. § 65-35-102 is liable civilly for damages resulting from such violations. Further, a violation of T.C.A. § 65-35-102 is also a violation of T.C.A. §39-14-104 under the provisions of T.C.A. § 65-35-105.

I. REQUESTED RELIEF

WHEREFORE, Navitas TN NG, LLC respectfully requests that the Commission:

1. Find that B&W Pipeline, LLC has violated T.C.A. § § 65-28-103(a) and 65-35-102(3).

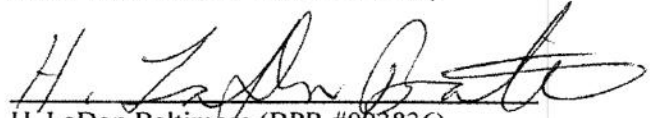
⁸ B&W Statement of Operating Conditions at 18

⁹ B&W Statement of Operating Conditions at 21

¹⁰ See Letter dated December 12, 2019 filed with the B&W Pipeline Complaint

2. Find that B&W Pipeline, LLC has been unjustly enriched such to warrant a finding of quantum meruit whereby Navitas TN NG, LLC is entitled to recover the reasonable value of their goods and services.
3. Find for Navitas TN NG, LLC for the loss of sales as a result of the curtailment Navitas experienced in July 2017.
4. Direct B&W Pipeline, LLC to remit to Navitas TN NG, LLC any amounts found to be due and owed to it.
5. Award any and all relief to which Navitas TN NG, LLC is entitled under Tennessee Code.
6. Award any other relief as the law allows and the Commission finds appropriate

RESPECTFULLY SUBMITTED,



H. LaDon Baltimore (BPR #003836)

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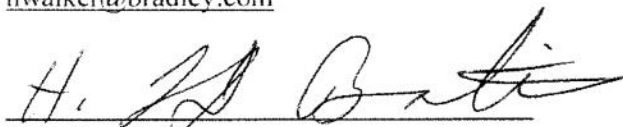
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CERTIFICATE OF SERVICE

The undersigned does hereby certify on this 22nd day of May, 2020 a copy of the foregoing was transmitted via electronic mail or United States Mail, first class, postage prepaid to the following:

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A handwritten signature in black ink, appearing to read "H. LaDon Baltimore", is written over a horizontal line.

H. LaDon Baltimore