

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION**  
**NASHVILLE, TENNESSEE**

**May 27, 2020**

<b>IN RE:</b>	)	
	)	
<b>COMPLAINT OF B&amp;W PIPELINE, LLC</b>	)	<b>DOCKET NO.</b>
<b>AGAINST NAVITAS TN NG, LLC FOR THE</b>	)	<b>20-00004</b>
<b>SUBMISSION OF A FRAUDULENT INVOICE</b>	)	
<b>DATED DECEMBER 10, 2019, FOR \$344,515.49</b>	)	

**ORDER DENYING NAVITAS MOTION TO DISMISS**

This matter is before the Hearing Officer of the Tennessee Public Utility Commission (“Commission” or “TPUC”) for consideration of *Navitas TN NG, LLC’s Motion to Dismiss Complaint of B&W Pipeline, LLC* (“*Motion to Dismiss*”) filed by Navitas TN NG, LLC (“Navitas”) on February 4, 2020. In its *Motion to Dismiss*, Navitas requests that the *Complaint* of B&W Pipeline, LLC (“B&W”) filed against Navitas on January 9, 2020 be dismissed on several grounds. B&W filed its *Response of B&W Pipeline to Motion to Dismiss* (“*Response*”) on February 5, 2020, asking the Commission to deny Navitas’s *Motion to Dismiss*.

***MOTION TO DISMISS***

Navitas provides several arguments as support for its *Motion to Dismiss*. Navitas asks that B&W’s *Complaint* be dismissed because the Commission lacks jurisdiction. Navitas states that under Tenn. Code Ann. § 65-4-117, the Commission does not have authority to decide billing disputes.<sup>1</sup> In addition, Navitas maintains that B&W’s *Complaint* fails to state a claim upon which relief can be granted because it is premature. According to Navitas, it has not gone to collections or

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<sup>1</sup> *Motion to Dismiss*, p. 2 (February 4, 2020).

attempted to enforce the invoices submitted to B&W.<sup>2</sup> Lastly, Navitas argues that B&W’s request that the Commission impose penalties and civil liabilities on Navitas is without basis in law.<sup>3</sup>

#### ***RESPONSE***

On February 5, 2020, B&W filed its *Response* stating “[t]he motion filed by Navitas TN has no merit and should be summarily denied.”<sup>4</sup> B&W argues that the courts have described the Commission as having practically plenary authority over the utilities it regulates and “[t]here 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.’”<sup>5</sup>

B&W also maintains that “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 of request’ of the Commission. T.C.A. 65-3-121 and § 65-4-116(a).” According to B&W, if its allegations are true, the Commission should not only declare the 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.”<sup>6</sup>

Lastly, according to B&W Navitas’s argument that B&W’s *Complaint* is premature is meritless. B&W maintains that a customer who receives an illegal utility bill does not have to wait until the utility sends the overdue bill to collection proceedings before filing a complaint.

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Response*, p. 2 (February 5, 2020).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 3.

According to B&W, “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).”<sup>7</sup>

## **FINDINGS AND CONCLUSIONS**

The Hearing Officer held a telephone Status Conference with the parties on February 26, 2020, to hear arguments on the *Motion to Dismiss*. During the Status Conference, the parties reiterated the arguments made in their filings. After reviewing the filings made by the parties, the Hearing Officer was persuaded by the arguments of B&W.

A motion to dismiss challenges the legal sufficiency of the complaint, not the strength of the evidence contained in the complaint.<sup>8</sup> Therefore, when evaluating a motion to dismiss, the Hearing Officer must construe the complaint liberally and presume all factual allegations to be true.<sup>9</sup> Navitas alleges the Commission lacks subject matter jurisdiction for a motion to dismiss to be granted because the Commission lacks the authority to decide invoice or billing disputes. The Hearing Officer finds that Navitas’s assertion is without merit.

Tenn. Code Ann. § 65-4-104 grants the Commission broad supervisory authority over the utilities it regulates. It provides: “[t]he commission has general supervisory and regulatory power, jurisdiction, and control over all public utilities, and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.” Consistent with the broad grant of authority to the Commission in statute, the courts have also interpreted the Commission as having “practically plenary authority over the utilities within its jurisdiction.”<sup>10</sup> This Commission has decided billing disputes in previous dockets, and in fact, there is currently another docket before the Commission that is a billing dispute

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<sup>7</sup> *Id.*

<sup>8</sup> *See, Pam Webb v. Nashville Area Habitat for Humanity*, 346 S.W.2d 422 (Tenn. 2011).

<sup>9</sup> *Id.*

<sup>10</sup> *See Tennessee Cable Television Association v. Tennessee Public Service Commission*, 844 S. W. 2d 152 (Tenn. Ct. App. 1992).

between two regulated utilities.<sup>11</sup> Therefore, the Hearing Officer concludes it is well within the power granted to the Commission to decide billing disputes that arise between regulated utilities.

Navitas also argues that B&W's *Complaint* should be dismissed because it fails to state a claim upon which relief can be granted. Navitas maintains the *Complaint* is premature because it has not gone to collections, and the Commission does not have the authority to refer the matter to the district attorney general for prosecution as requested in the *Complaint*. The Hearing Officer finds that these arguments are without merit. Navitas cites no authority that would require the dispute to go to collections or enforcement of the invoices prior to seeking resolution before the Commission. The Hearing Officer finds that no such requirement exists, and, therefore, B&W's *Complaint* is timely.

As stated by B&W, it also appears the Commission has authority to refer matters to the district attorney general because this is a power clearly given to the department of transportation under certain circumstances pursuant to Tenn. Code Ann. § 65-3-121 and the Commission has been granted certain authority given to the department of transportation.<sup>12</sup> However, even if the Commission did not have this authority or chose not to exercise it, Navitas's *Motion to Dismiss* would still fail. The Commission could still grant relief requested in B&W's *Complaint* such as opening a show cause docket and revoking Navitas's Certificate of Convenience and Necessity.

Based on the foregoing findings and conclusions, the Hearing Officer found that the *Motion to Dismiss* filed by Navitas should be denied.

**IT IS THEREFORE ORDERED THAT:**

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<sup>11</sup> See e.g., *In re: AT&T Tennessee Complaint Against Cellular South, Inc. d/b/a C Spire*, Docket No. 19-00099 (October 24, 2019).

<sup>12</sup> Tenn. Code Ann. § 65-4-105(a) provides:

In addition to the power conferred by this chapter on the commission, it shall possess with reference to all public utilities within its jurisdiction all the other powers conferred with reference to railroads regulated by the department of transportation or transportation companies regulated by the department of safety as provided by chapters 3 and 5 of this title.

*Navitas TN NG, LLC's Motion to Dismiss Complaint of B&W Pipeline, LLC* Navitas TN NG,  
LLC is DENIED.

A handwritten signature in black ink that reads "Monica Smith-Ashford". The script is cursive and fluid, with the first name "Monica" being larger and more prominent than the last name "Smith-Ashford".

Monica Smith-Ashford, Hearing Officer