

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

B&W PIPELINE, LLC

)

)

v.

)

Docket No. 20-00004

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NAVITAS TN NG, LLC

)

RESPONSE OF NATIVAS TN NG, LLC TO MOTION TO DISMISS

On June 22, 2020, B&W Pipeline filed a Motion to Dismiss Counterclaim on the grounds that certain claims made by Navitas TN cannot be heard by the Commission as “the Commission is not a court and has no statutory authority to grant relief to Navitas for any of these claims.”

The claims are as followed:

1. Find that B&W has stolen gas from Navitas in violation of T.C.A. § 65-35-102(3);
2. Find that B&W “has been unjustly enriched such to warrant a finding of quantum meruit;” and
3. Find that B&W is liable to Navitas for the loss of sales as a result of the curtailment Navitas experienced in July 2017

The motion filed by B&W Pipeline is without merit and should be denied.

B&W claims that the Commission “has no authority to grant relief for any of the claims made by Navitas” because the Commission “is not a court”. While it is true that the Commission is limited by its statutory parameters, the Commissions’ administrative functions extend to adjudication. The most basic duties prescribed the TPUC is to ensure that “all laws of this state

over which they have jurisdiction are enforced and obeyed, that violations thereof are promptly prosecuted, and all penalties due the state are collected.”¹

First, B&W argues that the Commission does not have jurisdiction over Navitas’ claims regarding the gas B&W took without the consent of Navitas’ in violation of T.C.A. § 65-35-102(3).

B&Ws argument is contrary to administrative law and powers delegated to the Commission by statute. T.C.A. § 65-35-102 covers the prohibited acts of public utilities and carriers, both of which the Commission regulates and has nearly plenary jurisdiction over.² The basic pillars of the functions administrative law are rulemaking and adjudication. The Commission has the authority to hear claims arising from violations of a statute that outlines the prohibited acts of public utilities.

Further, it is in the purview of the Commission to resolve the stated claim before B&Ws actions result in further harm. Navitas TN cannot be expected to conduct its business effectively and maintain service if B&W is free free to undercut Navitas’ livelihood in total disregard of their established tariff. B&W has admitted that they delivered Navitas’ gas to their affiliate, Rugby, but B&W has failed to pay Navitas’ the tariff rate they are entitled to charge in the state of Tennessee.³ B&W has managed to enrich their affiliate at no cost to themselves by transporting gas B&W was not entitled to take, then delivering that gas to an affiliate that B&W happens to own.

Second, B&W argue that only a court with equity jurisdiction can grant equitable relief, and that because the Commission is not a court, it has no equitable powers and cannot hear a claim of quantum meruit.

¹ T.C.A. § 65-1-113 states that, “It is the duty of the Tennessee public utility commission to ensure that Acts 1995, ch. 305 and all laws of this state over which they have jurisdiction are enforced and obeyed, that violations thereof are promptly prosecuted, and all penalties due the state are collected.”

² In the TPUC’s May 27, 2020 Order Denying Navitas Motion to Dismiss, the Commission specifically points to T.C.A. § 65-4-104 for granting the Commission “broad supervisory authority over the utilities it regulates.” And that the courts have interpreted the Commission as having “practically plenary authority over the utilities within its jurisdiction.” Commission quoting *Tennessee Cable Television Association v. Tennessee Public Service Commission*, 844 S. W. 2d 152 (Tenn. Ct. App. 1992).

³ See, *Motion to Dismiss Counterclaim* Docket 20-00004. Footnotes 2 and 9.

The Commission has the authority to answer the question of whether Navitas is entitled to charge its' tariff to common carriers. If Navitas has the right to charge its tariff rates, B&W Pipeline is obligated to pay them. As B&W has admitted several times, B&W transported Navitas' gas, but has failed to pay the established tariff rates that Navitas TN is entitled to charge.⁴ Navitas has a right to charge its established tariff in the State of Tennessee. By refusing to pay the rates Navitas is entitled to charge and delivering Navitas' gas to its affiliate, B&W has circumvented the TPUC rate making process. Contractual obligations have clearly been formed through ordinary course of business and the obvious financial discrepancy absent an existing contract, now Navitas is merely seeking to be put in the financial position they would have been had B&W acted in good faith and honored their obligations under the agreement.

Third, B&W argue that because the Commission is not a court, it has no authority to hear a civil suit or award damages.

This is incorrect. The Commission regulates the rates which Navitas' lawfully charged to B&W.⁵ Navitas has requested that the Commission find for the loss of sales as a result of the curtailment Navitas experienced in July 2017 due to B&W taking Navitas' gas without consent and to direct B&W to remit to Navitas any and all relief to which Navitas may be found to be owed by B&W Pipeline. T.C.A. § 65-4-117(a)(1) states that, "The commission has the power to... Investigate, upon its own initiative or upon complaint in writing, any matter concerning any public utility as defined in § 65-4-101." Both B&W and Navitas fall within the meaning of "public utility" as defined in § 65-4-101 and Navitas has appropriately brought its claims against B&W in writing as prescribed by the statute.

In the TPUC's May 27, 2020 "Order Denying Navitas Motion to Dismiss", the Commission specifically points to T.C.A. § 65-4-104 for granting the Commission "broad supervisory authority over the utilities it regulates." And that the courts have interpreted the Commission as having "practically plenary authority over the utilities within its jurisdiction."⁶ The Commission went on to state that billing disputes fall within this authority.

⁴ See, *Motion to Dismiss Counterclaim*, Docket 20-00004. Page 2, footnote 2; Page 6, footnote 9.

⁵ §T.C.A. 65-5-101 establishing the Commission's power to fix rates of public utilities.

⁶ The Commission quoting *Tennessee Cable Television Association v. Tennessee Public Service Commission*, 844 S. W. 2d 152 (Tenn. Ct. Ap. 1992).

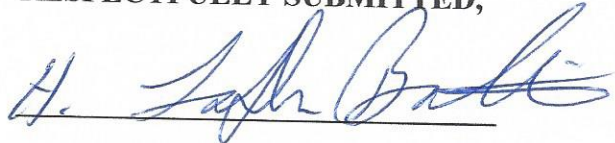
The facts of this matter are simple: As a regulated LDC, Navitas is entitled to charge the established tariff rates as Ordered by the Commission. B&W is obligated to pay those tariff rates when they use Navitas' services. B&W has admitted that they have taken Navitas' gas, and B&W is obligated to remit to Navitas the amount owed. B&W has admitted they delivered Navitas' gas to their affiliate, Rugby. B&W had no right to make such delivery. B&W is not an LDC and as such has no right to take Navitas' gas and give it to a third party for that third parties benefit. By doing so B&W has circumvented the Commissions' procedure for establishing tariffs and have allowed their affiliate to enrich themselves at cost to Navitas and Navitas' Tennessee customers.⁷

Conclusion

The issue under this docket is a billing dispute that the Commission has jurisdiction to hear and adjudicate. Navitas TN and B&W had an oral agreement which B&W violated by charging their FERC rate to Navitas. In light of this violation, Navitas is now entitled to charge its tariff rates to B&W so that B&W is not unjustly enriched by its' violation of the agreement between the entities.

Therefore, Navitas requests the Commission not dismiss the Counterclaoim of Navitas and the Commission deny B&W Motion to Dismiss Navitas Counterclaim.

RESPECTFULLY SUBMITTED,



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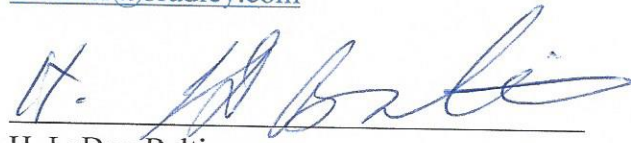
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⁷ As Navitas understands it, the city of Jamestown has first right to deliver gas in the area that B&W made the delivery to their affiliate. Navitas TN has second right to such delivery. As B&W is not an LDC, they have no business making such delivery.

CERTIFICATE OF SERVICE

The undersigned does hereby certify on this 25th day of September, 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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