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2007 SEP 11 AM 10:32  
PUBLIC UTILITIES COMMISSION

Clerk  
Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, Rhode Island 02888

September 10, 2007

Re: Petition to remedy the Non-Firm Sales Service Rate of RIPUC NG No. 101

PUC:

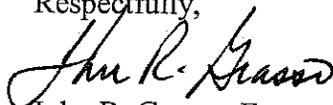
Pursuant to R.I.G.L. § 39-1-3, I write today on behalf of SilentSherpa Energy Consulting and Professional Services, Inc. (SilentSherpa), a Rhode Island professional services corporation, Rhode Island Hospital, Roger Williams Medical Center, Kent Hospital, Stanley-Bostich, Microfibres, and SilentSherpa's other non-firm clients to petition the Commission to remedy Section 5 of RIPUC NG No. 101.

We previously filed this Petition with the Division of Public Utilities and Carriers<sup>1</sup> as it was our belief then that Title 39 directed this sort of grievance to the Division. However, after receiving the DPUC's response<sup>2</sup> advising us that it did not possess the jurisdiction to provide the relief prayed for and suggesting that we redirect our Petition to the Commission, we respectfully enlist your assistance. Please note that even though we have taken the DPUC's advice and directed our Petition to the Commission, we remain convinced that the DPUC is the proper place for this Petition.<sup>3</sup>

Kindly refer to Exhibit 1, our original Petition, for a complete discussion of our argument in support of the remedy we seek.

On behalf of SilentSherpa and its non-firm clients, I respectfully ask you to consider our Petition and advise me should you require anything further of us.

Respectfully,

  
John R. Grasso, Esq.

<sup>1</sup> See Exhibit A (Petition to the Clerk, DPUC dated August 13, 2007).

<sup>2</sup> See Exhibit B (Letter from DPUC dated August 30, 2007).

<sup>3</sup> See Exhibit C (Letter to Chief Legal Counsel, DPUC dated September 10, 2007).

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 **COPY**

Clerk  
Division of Public Utilities and Carriers  
89 Jefferson Blvd.  
Warwick, Rhode Island 02888

August 13, 2007

Re: Petition to remedy the Non-Firm Sales Service Rate of RIPUC NG No. 101

DPUC:

Pursuant to R.I.G.L. § 39-4-3, I write today on behalf of SilentSherpa Energy Consulting and Professional Services, Inc. (SilentSherpa), a Rhode Island professional services corporation, Rhode Island Hospital, Roger Williams Medical Center, Kent Hospital, Stanley-Bostitch, Microfibres, and SilentSherpa's other non-firm clients to petition the Division to remedy Section 5 of RIPUC NG No. 101.

Section 5 of RIPUC NG No. 101 is patently unfair and should be amended to accurately reflect standard pricing schemes for regulated utilities with franchised monopolies. Section 5 establishes National Grid's natural gas Non-firm Sales service rate. It requires National Grid to price its cost of distribution to non-firm accounts on a discretionary value of service basis rather than an objective cost of service basis as is in effect with firm distribution rates. The Division should amend this discretionary pricing scheme because it is inconsistent with the standard for regulated utilities with franchised monopolies and unfair to consumers who must rely on National Grid for natural gas delivery.

Section 5 requires National Grid to base its charge for delivering natural gas to non-firm customers on that customer's own alternative fuel cost. In other words, National Grid subtracts the customer's cost of natural gas from the customer's cost of its alternative fuel to calculate what it will charge that customer to deliver natural gas. By substituting a ratepayer's alternative fuel cost for its own actual cost (plus reasonable return on investment), Section 5's pricing scheme is wholly unfair because it results in a unique distribution charge based on a factor that has no rational relationship to the cost of delivering natural gas. Instead of a single rate applied fairly across the board, the current scheme is random and out of control.

Moreover, Section 5's variable pricing scheme allows the utility to manipulate the cost of this franchised service without any regulatory consequence. In place of regulation, unprotected ratepayers are left with a rate structure based on the random value

of an unrelated variable. As a result, this franchised monopoly's rate structure is entirely out of balance with a limited and guaranteed rate of return model to which these types of regulated utilities are subject.

The Division should amend Section 5 for three reasons. First, there is no rational relationship between a customer's individual alternative fuel cost (i.e., fuel oil) and the utility's natural gas distribution charge to support its pricing scheme. Instead, this pricing mechanism is ripe for abuse particularly during periods of unprecedented instability in the oil market. Second, a state-sponsored rate scheme that handcuffs a ratepayer to a single natural gas distributor without protecting it from such pricing abuses is grossly unfair. Finally, permitting a utility to manipulate the cost of its natural gas distribution beyond the more traditional cost of service plus allowable return on investment is unsupportive of a competitive marketplace.

For the foregoing reasons, on behalf of SilentSherpa, Rhode Island Hospital, Roger Williams Medical Center, Kent Hospital, Stanley-Bostitch, Microfibres, and SilentSherpa's other non-firm clients, I respectfully petition this Division to amend Section 5 of RIPUC NG No. 101 so that it comports with a fair and reasonable pricing scheme for a regulated utility with a franchised monopoly.

Respectfully submitted,  
SilentSherpa Energy Consulting and Professional Services, Inc.  
By its attorney,

John R. Grasso, Esq.  
RI Bar 7495  
168A Kingston Road  
West Kingston, Rhode Island 02892  
Telephone 401.372.2096  
Facsimile 888-525-2096  
[jrg@johngrassolaw.com](mailto:jrg@johngrassolaw.com)

#### **CERTIFICATION**

I, John R. Grasso, Esq. certify that I have mailed via first class United States Postal Service an original and four copies of this Petition to the Division of Public Utilities and Carriers at 89 Jefferson Blvd. Warwick, Rhode Island on August 13, 2007.

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

**DIVISION OF PUBLIC UTILITIES AND CARRIERS**

89 Jefferson Boulevard  
Warwick, R.I. 02888  
(401) 941-4500

 **COPY**

FAX (401) 941-9248  
TDD (401) 941-4500

August 30, 2007

John R. Grasso, Esquire  
168A Kingston Road  
West Kingston, Rhode Island 02892

Re: R.I.G.L. §39-4-3 Petition

Dear Attorney Grasso:

The Rhode Island Division of Public Utilities and Carriers (“Division”) has completed its investigation with respect to your August 13, 2007 “Petition to remedy the Non-Firm Sales Service Rate of RIPUC NG No. 101.” You filed the petition as a complaint pursuant to R.I.G.L. §39-4-3, requesting that the Division “amend Section 5 of RIPUC NG No. 101 so that it comports with a fair and reasonable pricing scheme for a regulated utility with a franchised monopoly.”

In response to the remedy you seek, the Division has concluded that it lacks the requisite jurisdictional authority to grant the relief you have requested, and therefore, must decline to take any further regulatory action on your complaint. In support of this conclusion, the Division emphasizes that the tariff provision in issue was adjudicated before and approved by the Rhode Island Public Utilities Commission (“Commission”) in the context of a duly noticed rate proceeding; and that R.I.G.L. §39-4-3 does not empower the Division to vitiate a Commission-approved tariff.

The Commission has exclusive authority to regulate the rates of National Grid.<sup>1</sup> In contrast, the Division is an indispensable party in all rate proceedings before the Commission<sup>2</sup>, and fully participated in the rate case that led to the adoption of Section 5 of RIPUC No. 101 (“Section 5”). Subsequent to the approval and adoption of Section 5 by the

<sup>1</sup> R.I.G.L. §39-3-11; and Narragansett Electric v. Burke, 381 A.2d 1358 (R.I. 1977).

<sup>2</sup> See R.I.G.L. §39-1-3; and Providence Gas Co. v. Burke, 419 A.2d 263 (R.I. 1980).

Commission, the Division became responsible for compelling the observance of the tariff provision in accordance with the Division's statutory responsibility for the "execution of all...regulations and orders of the Commission."<sup>3</sup> Rhode Island law also prohibits the Division from appealing a Commission decision.<sup>4</sup> Additionally, any rate provision approved by the Commission for a public utility "carries a presumption of reasonableness that remains until the contrary is proven."<sup>5</sup>

It is abundantly clear under Rhode Island's existing statutory and fully developed case law that the Commission is solely authorized to set rates for National Grid. While R.I.G.L. §39-4-3 suggests that the Division possesses some limited ratemaking authority with respect to National Grid, this section of law dates back to 1912 and has been constructively negated by myriad Rhode Island Supreme Court decisions, and more recently enacted statutory law, which makes it obvious that ratemaking authority vests solely in the Commission. Accordingly, the Division finds that the relief you have requested would, if granted, constitute and improper usurpation of the Commission's ratemaking authority.

Notwithstanding the Division's decision to dismiss your complaint filing, the Division does find some brief comments on the merits are in order. In your complaint you describe Section 5 as "patently unfair". The referenced Section 5 contains eight different Schedules of tariffs, specifically Schedule A through Schedule H that pertain to various services for commercial and industrial customers. Though your complaint does not mention it specifically, we believe it is limited to Schedule G, Non-firm Sales (NFS) Service.

Your complaint correctly states that NFS Service is priced on a value of service basis rather than on a cost of service basis. Your characterization of value of service pricing as a "discretionary pricing scheme" is one that is inconsistent with the tariff. The price of NFS Service is based on published prices for the type of alternative fuel used by the customer, with specific discounts, per tariff, based on the potential volume of consumption. The tariff does not provide for discretionary pricing of NFS. Your complaint also does not address the fact that, by definition, customers who use NFS are not captive customers and may at any time substitute alternatives fuels for utility provided service.

Your complaint alleges that the "variable pricing scheme allows the utility to manipulate the cost of this franchised service without any

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<sup>3</sup> See R.I.G.L. §39-1-3

<sup>4</sup> Providence Gas Co. v. Burke, 419 A.2d 263 (R.I. 1980).

<sup>5</sup> In re: Island Hi-Speed Ferry, LLC, 746 A.2d 1240 (R.I. 2000).

regulatory consequence.” You do not provide any evidence as to how the utility can manipulate the price for NFS Service when it is based on publicly published data. We do not perceive that this is a service whose price is being manipulated by the utility. However, if you have specific information regarding unauthorized price manipulation or pricing abuse we ask that you provide such information to this agency.

We agree that the current value-of-service pricing regime is not tied to the Company’s costs of providing service. That is the very nature of value-of-service pricing. The use of value-of-service pricing is intended to address (1) volatility in the relationship between natural gas and alternate fuel prices and (2) uncertainties regarding service volumes and revenue that can result from such volatility. Such uncertainties led the Commission, as well as a number of other commissions (particularly in Northeastern and Middle Atlantic states where fuel oil competition is greatest), to modify their approaches to ratemaking for natural gas utilities in the mid-1980’s such that (a) Local Gas Distribution utilities (LDCs) were provided greater flexibility to adjust their prices to compete with alternate fuels, and (b) the ultimate responsibility for the recovery of costs associated with the provision of NFS was shifted to firm service customers. This approach to ratemaking can provide non-firm customers pricing at below cost-based levels when alternative fuel prices are low relative to natural gas prices. It also enables the utility to price service to NFS customers at levels above fully allocated cost when alternate fuel prices permit. Pricing in excess of cost-of-service levels under such circumstances is viewed as providing a measure of compensation to firm customers for assuming risk associated with the recovery of costs for providing service to NFS.

The value-of-service pricing approach for NFS, which is the subject of your complaint, has been in effect for at least twenty years. Without responding specifically to your criticisms of the value-of-service approach, the Division does not disagree that the time may be right to review whether the conditions of the current gas market still warrant value of service pricing for NFS service. Establishment of a cost-of-service based tariff may warrant further consideration at this time. Although cost-based rates may mitigate price volatility that interruptible customers have been experiencing, a cost-based NFS tariff may or may not actually lower the cost of the service to interruptible customers. Some existing NFS customers could see higher pricing under a cost-of-service ratemaking regime. Moreover, movement toward more cost-based NFS rates may require other changes in existing NFS tariff provisions that could affect that economic attractiveness of that service (e.g., revenue decoupling or annual volume guarantees.)

In closing, all of National Grid's gas tariffs (as well as the predecessor gas distribution utilities), including the pertinent Schedule G of Section 5, have been approved by the Commission. As stated above, the Division maintains that approval of National Grid's rates and tariffs is in the sole jurisdiction of the Commission. Therefore, the Division recommends that you consider submitting your petition and request for relief with the Commission, which may thereupon elect to open a rate proceeding to evaluate the merits of your complaint. The Division would naturally participate in such a proceeding.

Sincerely yours,

A handwritten signature in cursive script that reads "John Spirito, Jr." with a stylized flourish at the end.

John Spirito, Jr.  
Chief Legal Counsel

cc: Thomas Ahern, Administrator  
Luly Massaro, Clerk  
Stephen Scialabba  
Patricia Luccarelli, Esq., RIPUC

C

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Mr. John Spirito, Jr.  
Chief Legal Counsel  
Division of Public Utilities and Carriers  
89 Jefferson Boulevard  
Warwick, Rhode Island 02888

September 10, 2007

Re: R.I.G.L. § 39-4-3 Petition

Dear Mr. Spirito:

Thank you for your timely response to the above referenced petition. In light of your advice that the Division does not have the jurisdiction to grant the relief SilenSherpa seeks on behalf of its non-firm service clients, please allow me to explain why I enlisted the Division's assistance rather than the Commission's.

I think the best place to begin my explanation is at the beginning. Section 39-1-1 sets forth the purpose of the Public Utilities Commission and the Division of Public Utilities and Carriers. Our legislature clearly meant for the Commission and Division "to provide just and reasonable rates and charges for services and supplies."<sup>1</sup> It specifically expressed its concern with the hardships caused to many of our state's institutions, organizations, and businesses by (1) the rate at which the prices of fossil-fuels are rising, and (2) the severe fluctuations of those rates when it enacted Title 39.<sup>2</sup> The opening section of that Title clearly established that the purpose of the Commission and Division is to secure for Rhode Island "the benefits of reasonable and stables rates" and "least-cost procurement."<sup>3</sup> With the intent of our legislature in mind and the specific dictates of Chapter 39-4 as our roadmap, SilenSherpa petitioned for your Division's assistance. Here's why.

A few paragraphs after § 39-1-1<sup>4</sup>, the legislature set out the authority of the Division which authority includes "the execution of all laws relating to public utilities and carriers" and such other duties and powers "**hereinafter** set forth."<sup>5</sup> A few chapters after that, and the real procedural dictate, the legislature went on to define in more detail how it expected the Commission and Division to carry out their duties. Section 39-4-3(a)

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<sup>1</sup> R.I.G.L. § 39-1-1(b).

<sup>2</sup> R.I.G.L. § 39-1-1(e)(1).

<sup>3</sup> R.I.G.L. § 39-1-1(e)(4).

<sup>4</sup> R.I.G.L. § 39-1-3.

<sup>5</sup> R.I.G.L. § 39-1-3(b) (emphasis added).

specifically calls upon the Division “upon a written complaint made against any public utility...that any of the rates, tolls, charges...of any public utility are in any respect unreasonable...to make such investigation as it may deem necessary or convenient.” Next, the legislature went on to say that “if, upon a hearing and investigation had under the provisions of this chapter, the division shall find any existing rates, tolls, charges...to be unjust, unreasonable...the division shall have the power to fix and order a substitute therefore such rates, tolls, charges...as shall be just and reasonable.”<sup>6</sup> Moreover, “if, upon a hearing and investigation had under the provisions of this chapter, the division of public utilities and carriers shall find that any regulation, measurement, practice, act, or service or any public utility is unjust, unreasonable...or otherwise in violation of any provisions of chapters 1 – 5 of this title,...the division shall have the power to substitute therefore such other regulations, measurements, practices, service, or acts, and to make such order respecting, and such changes in the regulations, measurements, practices, services, or acts, as shall be just and reasonable.”<sup>7</sup> Finally, the legislature made certain that the division had all the foreseeable tools it would need to perform its policing function when it gave the division the power to summarily investigate “with or without notice as it shall deem proper” whenever it “shall believe that any of the rates, tolls, charges...are in any respect unreasonable.”<sup>8</sup> This is broad power and it stands to reason the legislature knew what it was doing when it specifically gave that power to the division.

As you can see, our reading of this statutory scheme seems to establish that your Division possesses not only the jurisdiction to investigate “unreasonable” rates, it appears to be exclusively charged with the duty to remedy any finding that any act involving a public utility conflicts with the legislature’s intent as it clearly spelled it out in § 39-1-1. In fact, the legislature clearly refers to the division, not the commission, throughout Chapter 39-4. It stands to reason, therefore, that faced with what we believe to be a fundamentally unreasonable pricing scheme, we would turn to the division for relief.

Notwithstanding the above rationale, I will redirect the SilentSherpa Petition to the Commission as you recommended in your letter and pray that it will consider the argument we have put forward and grant such relief that will make Section 5 of RIPUC NG No. 101 comport with the clear intent of our legislature.

Once again, I thank you for your timely reply. I look forward to working with you, the Division, and the Commission towards an equitable resolution to this issue.

Respectfully,

John R. Grasso, Esq.

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<sup>6</sup> § 39-4-9.

<sup>7</sup> § 39-4-10.

<sup>8</sup> § 39-4-13.