

August 5, 2008

VIA HAND DELIVERY & ELECTRONIC MAIL

Luly E. Massaro, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

**RE: Docket 3943 – National Grid Request for Change of Gas Distribution Rates
Response to Motion of Silent Sherpa for Emergency Relief**

Dear Ms. Massaro:

On behalf of National Grid,¹ I have enclosed an original and nine copies of the Company's response to the Motion of the Silent Sherpa for Emergency Relief in connection with the above-referenced proceeding.

Thank you for your attention to this transmittal. If you have any questions, please feel free to contact me at (401) 784-7667.

Very truly yours,



Thomas R. Teehan

Enclosures

cc: Docket 3943 Service List

¹ The Narragansett Electric Company d/b/a National Grid ("Company").

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
RHODE ISLAND PUBLIC UTILITIES COMMISSION

National Grid Application to Change Rate Schedules)))))	Docket 3943
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**RESPONSE OF NATIONAL GRID
TO MOTION FOR INTERIM/EMERGENCY RELIEF BY SILENTSHERPA
ENERGY CONSULTING**

This response is submitted by The Narragansett Electric Company d/b/a National Grid (“National Grid” or the “Company”) in accordance with the Rhode Island Public Utilities Commission (the “Commission”) Rule 1.15(d) regarding the Motion for Interim/Emergency Relief (the “Motion”) by SilentSherpa Energy Consulting and Professional Services, Inc. (“SilentSherpa”). In its Motion, SilentSherpa requests that the Commission order National Grid to charge the “floor tariff rate” as its price for non-firm service pending the final disposition of the Company’s proposal on non-firm pricing in this case (Motion at 3). In response, the Division requests that the Commission set aside the tariff rate structure and establish a fixed per-therm rate, which would be the equivalent of the Company’s existing distribution rate for comparable firm-service classes (Division Response at 3).

For the reasons set forth below, National Grid respectfully requests that the Commission deny the requested interim/emergency relief. If the Commission finds it necessary or appropriate to change non-firm rates on an interim/emergency basis, the Company requests that the Commission adopt the non-firm rate cap proposed by the

Company in this proceeding because this alternative is most consistent with the existing tariff rate structure, and therefore, is the best alternative for implementation on an interim basis pending the Commission's determination of the important public-policy issues involved in changing the rate structure for non-firm service.

I. Overview

Under the Company's tariff, customers with dual-fuel capability are eligible for interruptible or "non-firm" service, which is not a "lesser quality service," as claimed by SilentSherpa (Motion at 3). Rather, non-firm service is an "opportunity service" made available to dual-fuel customers because these customers have alternative energy options and can choose to bypass the gas distribution system (and avoid its fixed costs) when the cost of their alternative fuel makes it advantageous to do so. Non-firm customers are allowed to use the Company's distribution capacity (when it is not being used by firm customers) without incurring the long-term cost of constructing and maintaining that capacity. Thus, non-firm service provides dual-fuel customers with the opportunity to secure an energy resource that is less expensive than their alternative, while at the same time providing firm-service customers – including residential customers- with the opportunity to collect revenues to offset the fully allocated cost of distribution capacity, which they have paid over time through distribution rates.

Within this context, the issue raised in SilentSherpa's Motion regarding the appropriate price of non-firm service is neither new, nor appropriately addressed on an "interim/emergency basis." SilentSherpa's fundamental dispute is that the rate charged to large and extra large, dual-fuel C&I customers for non-firm service is too high under the existing rate tariff. However, the pricing policy about which SilentSherpa complains is

the intended subject of adjudication among the parties in this rate proceeding, and is properly considered within the context of a comprehensive base-rate proceeding, because it requires a careful and reasoned balancing of interests among customer classes. Specifically, the pricing of non-firm service requires the Commission to consider the interests of: (1) the Company's firm customers, who are primarily residential and smaller C&I customers that have paid for the Company's distribution capacity through rates, and (2) non-firm service customers, who are large and extra-large C&I customers that want to use that distribution capacity for their own benefit to avoid high oil prices, but who also are important to the economic health of Rhode Island. Modification of the existing rate structure and pricing for non-firm service will have a significant impact on the amount of revenues available to offset the costs of residential and smaller C&I customers throughout the gas year. This renders the issue a poor candidate for "interim/emergency" treatment, especially where the claimed "irreparable harm" is the impact of high energy prices, which are affecting all customer classes on a proportional basis.

The SilentSherpa's complaint regarding the price of non-firm service stems from the fact that, under the Company's existing rate tariffs, the price for non-firm service is tied to the price of oil. The theory of this rate structure is that the best way to place a value on the distribution capacity that is paid for by firm customers (and used on a discretionary basis by non-firm customers) is to set the price for use of that capacity at a level that provides a discount to the market price for the customer's alternative fuel (usually No. 2 or No. 6 heating oil). This means that when oil prices are increasing in the marketplace, the price of the Company's non-firm service will rise as well because, in fact, the Company's distribution capacity has become more valuable as a substitute

energy resource for those customers who are shifting usage between oil and natural gas, and who have avoided all of the costs borne by smaller customers to build and maintain the system. Under the Commission’s existing policies, the revenue that is generated for this valuable capacity is returned directly to smaller customers through the Distribution Adjustment Charge, which has the effect of lowering their distribution rates. Over the past three years, the total annual offset provided to firm service customers has ranged from \$3.0 to \$4.5 million.¹ This ratemaking arrangement recognizes that the Company and its firm customers have made this capacity available for non-firm customers to rely on when it is to their advantage to do so, and that there is a market value associated with this flexibility.

In requesting that the Commission take the extraordinary step of ordering emergency relief, SilentSherpa relies exclusively on the claim that, unless the Commission provides interim/emergency relief in the form of a massive rate reduction to take effect prior to the conclusion of this adjudicated proceeding, non-firm customers “may experience immediate and irreparable harm” as a result of increasing energy prices in the marketplace. However, the fact is that *all* of the Company’s customers are struggling to deal with recent and upcoming increases in energy prices and the interests of SilentSherpa’s clients are no different from any other class of customers in that respect, nor has SilentSherpa made such a demonstration. SilentSherpa’s claims of “irreparable harm” amount to no more than a complaint about the reality of the competitive marketplace for energy resources: the market is subject to a high degree of

¹ Under the current rate structure, approximately \$1.6 million of non-firm revenues are factored into the Company’s base rates, which reduce the amount of revenue to be collected through base rates from other firm rate classes. In addition, customers receive 75 percent of all revenues collected through the non-firm rate in excess of the \$1.6 million. These revenues are credited to customers through the DAC as a direct offset to monthly customer bills.

price volatility (and has been for some time) and prices in a competitive market may increase over time. Thus, with its complaint about high prices, SilentSherpa has not in any way satisfied the strict standard established by the Commission and the Rhode Island Supreme Court for emergency relief, which requires a demonstration by the petitioner that reasonably recent, unforeseen events are causing imminent peril to the public health, safety, or welfare sufficient to constitute an emergency.

Even if the Commission were inclined to grant a level of relief in this case, SilentSherpa's proposed course of action is drastic and would lock-in a reduced, fixed rate for non-firm service that not only represents the barest minimum rate possible, but also represents a substantial change from Commission practice in terms of rate structure. Significantly, the Division concurs with this assessment (Division Response at 1-2). In fact, the non-firm rate proposed by SilentSherpa is likely to be wholly inconsistent with the Commission's ultimate determination of the issue in this case, even if the Commission were to decide to reject the Company's proposal in its entirety and to adopt the recommendations of intervenors other than SilentSherpa. The "fix" proposed by SilentSherpa goes well beyond any reasonable relief to the claimed harm, even if the Commission were to find it necessary or appropriate to provide emergency relief.

Although the Division's proposal is much more reasonable than SilentSherpa's proposal in terms of protecting the interests of firm customers, it also represents a marked change in the existing tariff rate structure (i.e., moving from a variable, market value rate to a fixed, cost-based rate structure). Given that any emergency relief so ordered by the Commission would inappropriately modify the Company's tariff non-firm service rate and would necessarily require a determination of complex ratemaking and policy issues

under dispute in this proceeding prior to the completion of the adjudicatory phase of the proceeding, the Commission should refrain from granting the relief requested. As explained below, the Company's proposal in this proceeding is to maintain the rate structure currently contained in the Company's tariff for non-firm service; but to cap the tariff rate at a cost-based level that constrains the transfer of oil-price increases to natural gas customers so that large and extra-large dual-fuel customers who are important to the Rhode Island economy are spared the more severe cost increases occurring in the heating oil market. Because this proposal adheres most closely to the current rate tariff structure, it is most consistent with Rhode Island case law for emergency treatment and best preserves the Commission's options in terms of the important public policy decisions involved in this case.

II. Standard for Emergency Rate Relief

The SilentSherpa is requesting interim/emergency relief under Commission Rule 1.17 (Motion at 1). Under Commission Rule 1.17(a), the motion must allege such "extraordinary facts of immediate and irreparable injury" as would justify the Commission's exercise of discretion by granting interim relief prior to a final decision. In addition, Commission Rule 1.17(f) allows that, in circumstances when delay may cause immediate and irreparable harm, the Commission may waive the usual requirements for interim relief, or condition such relief on whatever conditions it deems reasonable.

The Commission's authority to grant emergency or interim relief arises from R.I.G.L. Section 39-1-32, which states that "the commission, when it determines that public safety so requires, or that failure to act immediately will result in irreparable injury to the public interest ... may issue an order effective immediately, but for temporary

duration, until formal notice be given and a hearing had of the parties in interest.” Likewise, if the Commission were to modify its regulations and rules on an emergency basis, it must find “that an imminent peril to the public health, safety, or welfare” requires a change in rules and regulations. R.I.G.L. Section 42-35-3(b).

In reviewing the discretion afforded to the Commission to grant emergency relief, the Rhode Island Supreme Court has ruled that R.I.G.L. Section 39-1-32 is not to be used as an “afterthought” because it contains certain conditions that must be satisfied before it can be invoked. Providence Gas Company v. Burke, 380 A.2d 1334, at 1340 (1977). Significantly, in evaluating the Commission’s scope of authority to implement emergency rate treatment, the Court found that a company’s compliance with the terms of its tariff can in no way impose a threat to the public safety, nor would compliance with the existing tariff cause “irreparable harm to the public interest.” Id. In particular, the Court has found that the Commission’s desire to reassess tariff terms to achieve a “more equitable result,” does not constitute irreparable injury. Id.

Similarly, the Commission has strictly interpreted R.I.G.L. Section 39-1-32 in determining whether an emergency exists. Pawtucket Water, Docket No. 3164, Order No. 16398 at 9 (2000). For an emergency to exist under R.I.G.L. Section 39-1-32, the situation must be the result of “reasonably recent unforeseen events.” Id. at 10. In other words, the emergency must arise from recent rather than longstanding issues. Id. As explained by the Commission, the “evidentiary standard for emergency...relief is a difficult one to meet.” Id. at 13. In addition, the party moving for emergency relief has the burden of proving, through the presentation of facts, that there exists an “imminent peril to the public health, safety, or welfare sufficient to constitute an emergency.”

Terminations Regulations, Docket No. 1725, Order No. 16831, (2002). In upholding this strict standard, the Commission has routinely and consistently denied petitions by low-income advocates for emergency changes in the termination rules during periods of increasing prices, and resulting service terminations. See e.g. Termination Regulations, Docket No. 3761, Order No. 18887 (2007); Termination Regulations Docket No. 1725, Order No. 18941 (2007); Termination Regulations, Docket No. 1725, Order No. 17617 (2003); Termination Regulations, Docket No. 1725, Order No. 16831 (2002).

III. LEGAL ANALYSIS

A. Request for Interim/Emergency Relief

Under Rhode Island law and the Commission's precedent, the standard for emergency relief is demanding and requires a demonstration by the petitioner that reasonably recent, unforeseen events are causing irreparable injury to the public interest or irreparable harm to the public interest or causing imminent peril to the public health, safety, or welfare sufficient to constitute an emergency. Providence Gas Company, 380 A.2d 1334, at 1340 (1977); see, Pawtucket Water, Docket No. 3164, Order No. 16398 at 9 (2000); see also Termination Regulations, Docket No. 1725, Order No. 16831 (2002). In its Motion, SilentSherpa claims that emergency relief is necessary to alleviate "immediate and irreparable" harm to large and extra-large C&I customers that *may* result under the existing rate tariff as a result of increasing oil prices (Motion at 3). As a basis for this claim, SilentSherpa claims that (1) there is no end in sight for volatility in the fossil fuel marketplace; (2) the pending rate case "will clearly proceed without resolution

for months,”² and (3) customers who stay on non-firm service will continue to pay “two and three hundred percent more,” than the average firm service customer (id. at 3, see also page 2, at paragraph 11). SilentSherpa has not alleged any “imminent peril to the public health, safety, or welfare sufficient to constitute an emergency,” or demonstrated any irreparable injury to the public interest or irreparable harm to the public interest as required by the Commission’s standard, nor has SilentSherpa demonstrated that the emergency is the result of recent and unforeseeable events. As a result, SilentSherpa’s Motion has not provided any basis for the Commission to provide for emergency relief under Rhode Island law or Commission precedent.

In Providence Gas Company v. Burke, the gas utility appealed a Commission order requiring the utility to make refunds to certain customers in a manner that was contrary to procedures set forth in the company’s filed tariff for the gas price adjustment clause (“PGA”). Providence Gas Company v. Burke, 380 A.2d at 1338. In defending its decision, the Commission relied, in part, on R.I.G.L. Section 39-1-32 as allowing it to take immediate action to effect a more “equitable means” of distribution of a pipeline refund than the Commission felt was allowed by the tariff. Id. at 1339-1340. The Rhode Island Supreme Court overturned the Commission’s decision finding that its “approach to altering the terms of the tariff [did] not come” within the pale of § 39-1-32. The Court stated that the Company’s reliance on its PGA tariff “is in no way a threat to the public safety” and that the Commission’s “wishe[s] to reassess the PGA refund mechanism to arrive at a more equitable result . . . does not constitute irreparable injury.” Id. at 1340.

² It should be noted that the pending rate case will not “proceed without resolution for months,” as claimed by SilentSherpa since the proceeding is subject to a statutory deadline. Including the month of August, there are only 90 days until the Commission will be called upon to render a decision on issues raised in this proceeding.

The circumstances before the Commission in this case are no different from the Providence Gas Company case in that SilentSherpa is asking the Commission to provide emergency relief from the Company's non-firm rate tariff, not on the basis of "irreparable injury to the public interest" or "irreparable harm to the public interest" or "imminent peril to the public health, safety, or welfare," but rather on the basis that equity calls for the Commission to alter the terms of the existing non-firm tariff because it "substantially and unfairly disadvantage[s] non-firm customers" (Motion at 1). As indicated by the Court in Providence Gas Company, there is no threat to the public safety in the application of the non-firm rate tariff and there is no "irreparable injury" that arises from a wish to alter the terms of the tariff to achieve a more equitable result.³ In fact, allowing emergency relief on the basis espoused by SilentSherpa would simply undermine the integrity of the Commission's standard, setting the precedent that customers can petition for emergency rate relief *within a base-rate proceeding* before the Company's costs and ratemaking proposals are fully adjudicated or even laid out for the Commission for a reasoned decision.

Lastly, the "crisis" referenced by SilentSherpa is neither a "recent" development, nor a development that was "unforeseeable," which is a requirement of the Commission in granting emergency relief. The price volatility of fossil fuels is a longstanding issue, existing for Rhode Island customers in its present form since at least 2000, as is the proper pricing of non-firm service in a marketplace where dual-fuel customers have the

³ SilentSherpa alleges that the Company's responses to Data Requests DIV-11-1 through DIV-11-3 provide "sufficient evidence" that the Company's "pricing scheme" is "random, discretionary and at times based on pricing practices not sanctioned by the Commission" (Motion at 2). The Company vigorously contests this characterization and expects that this claim will be the subject of further discovery and hearing that will reveal a different perspective. Resolution of this claim, however, has no bearing on the merits of SilentSherpa's claim for emergency relief, nor has SilentSherpa made a connection that could be addressed by the Company.

ability to shift usage between natural gas and oil. Even SilentSherpa states that it warned of the present “crisis” about twelve months ago (Motion at 2). Therefore, rather than presenting an “imminent peril” warranting emergency repair by the Commission, SilentSherpa’s request for interim/emergency relief represents just another strategy to force a significant policy change from the Commission in the basis for non-firm rate pricing.⁴ While there may be a legitimate public policy debate that exists in regard to the appropriate pricing of non-firm distribution service, the Commission cannot reasonably and fairly resolve this debate without the benefit of a full adjudicatory record and without extending an opportunity to all interested parties to fully support and advocate for their position through the adjudicatory process. Accordingly, the Commission should not “shortcut” the process on this important issue simply because non-firm customers are anxious for rate relief, especially where those customers continue to receive service *at a significant discount* to their alternative fuel option.

For the reasons set forth above, the Commission should find that there is insufficient basis to provide emergency rate relief to non-firm customers through an alteration of the Company’s rate tariffs in advance of the Commission’s consideration and final decision on the merits of the case.

B. Proposed Alternative

Although National Grid disagrees with the claims and recommendations asserted by SilentSherpa, and believes that the issue of the appropriate non-firm rate structure should be determined by the Commission only after a review of the comprehensive evidentiary record that will ultimately exist in this proceeding, the Company recognizes

⁴ The Division also concludes that SilentSherpa has not likely presented a compelling case for interim relief, but recognizes that the Commission nevertheless may find it appropriate to provide interim rate relief (Division Response at 2).

that increasing oil prices are having a substantial impact on large non-firm customers in the Company's service area under the current pricing structure. Therefore, if any interim relief is to be granted by the Commission, the Company respectfully requests that the Commission implement the Company's proposed non-firm rate cap. The Company's proposal in this proceeding is to maintain the rate structure currently contained in the Company's tariff for non-firm service; but to cap the tariff rate at a cost-based level that constrains the transfer of oil-price increases to natural gas customers so that large and extra-large dual-fuel customers who are important to the Rhode Island economy are spared the more severe cost increases occurring in the heating oil market. Because this proposal adheres most closely to the current rate tariff structure, it is most consistent with Rhode Island case law for emergency treatment and best preserves the Commission's options in terms of the important public policy decisions involved in this case.

1. Current Tariff Pricing Structure for Non-Firm Service

Currently, the price for non-firm service is set on a "value-of-service" basis, which means that the price charged to non-firm customers is set slightly below the cost of the customer's alternative energy option, which is usually No. 2 or No. 6 fuel oil. Value-of-service pricing is intended to: (1) recognize the value of system capacity that is made available to non-firm customers who have not paid for the capacity, and (2) recognize that non-firm customers operate not only in the natural gas market, but also in an overall energy market, which permits them to take advantage of the least expensive source of energy among various sources. The continuation of a value-of-service pricing structure, or alternatively, the adoption of a cost-based structure, is an issue subject to adjudication

in this case and implementation of either the proposal made by SilentSherpa or the Division would significantly change this longstanding tariff rate structure.

Specifically, the existing non-firm tariff rate establishes the non-firm rate on a monthly basis, priced so that the sum of the cost of natural gas and National Grid's distribution rate provides the customer with a discount off the cost of the customer's alternative fuel. The level of discount is based on the amount of gas that a customer can use and the type of alternative fuel, with discounts currently ranging from 2.25 percent to 22 percent. The distribution rate in this calculation is also subject to a floor price (generally \$0.10 per dekatherm in the summer and \$0.16 per dekatherm in the winter), but there is no cap or maximum charge. Revenues generated through non-firm service are funneled back to firm service customers to offset their distribution costs and over the past three years, the total offset provided to firm service customers has ranged from **\$3.0 to \$4.5 million**, including the \$1.6 million amount currently included in base rates.

2. Proposed Alternative if Emergency Relief is Found to be Warranted

Over recent months, a significant price differential between natural gas and oil has arisen, with the resulting non-firm tariff generally ranging from \$0.60 to \$0.90 per therm, or \$6.00 to \$9.00 per decatherm for those customers with the minimum discount of 2.25%, to most customers with a 22% discount being charged \$0.10 per therm, or \$1.00 per decatherm in most months. . Because this pricing differential has caused significant increases in the non-firm rate for C&I customers that are important to the Rhode Island economy, the Company is proposing in this case to establish a cap for non-firm service that equates to approximately 150 percent of the firm distribution rate for a representative rate class. For a customer consuming less than 25,000 therms, the cap

would be \$0.4279 per therm, or \$4.279 per decatherm. For a customer consuming more than 25,000 therms, the cap would be \$0.1701 per therm, or \$1.701 per decatherm. By comparison, SilentSherpa is requesting that the Commission set the non-firm rate at the minimum distribution rate, or \$0.01 per therm and \$0.10 per decatherm.

It is also important to note that Company's proposed rate cap does not represent the price paid in *each month* by *each* non-firm customer. Only **two** out of the 35 customers currently taking non-firm service use No. 2 heating oil as an alternative fuel – the vast majority of non-firm customers have No. 6 oil as a fuel alternative, which is not experiencing as great a price differential with natural gas as No. 2 oil. In the period April 2008 through July 2008, National Grid's tariff non-firm rate for customers with No. 6 oil as their fuel alternative ranged from the minimum of \$0.01 per therm to \$0.917 per therm, with the average in each month being: \$0.157 for April, \$0.163 for May, \$0.223 for June and \$0.182 per therm for July, all of which were *substantially* below the cap of \$0.4279 per therm for customers using less than 25,000 therms, and within range or below the rate cap for customers using greater than 25,000 therms (\$0.1701 per therm) (see Company Response to Data Request DIV-11-1, Att. 2). In fact, the cap would only come into play for non-firm accounts discounted less than 22 percent, which is about one-half of customers using No. 6 oil and all of the customers using No. 4 and No. 2 oil. The Company's proposed rate cap is simply designed to (1) maximize the value of the distribution capacity used by non-firm customers for the benefit of firm customers who will experience reduced distribution rates through the generation of non-firm revenues; while (2) ensuring that non-firm customers who are important to the Rhode Island economy are shielded from the more severe price increases in the market for alternative

fuels (i.e., No. 6 and No. 2 heating oil). It does not establish a new price equal to 150% of distribution rates.

In that regard, it is also important to note that charging customers 150% of the firm distribution rate is not a patently inequitable result, as suggested by SilentSherpa, and to a certain extent by the Division (Motion at 2-3). As discussed in the foregoing paragraph, non-firm customers will pay far below the proposed cap, *and below the firm distribution rate*, in most months. Non-firm customers pay on a volumetric basis, so even if the rate charged is 150% of the distribution rate, the amounts paid by a non-firm customer over the course of the year are appropriate for the level of service that they are requesting from the Company. Contrary to the claims of SilentSherpa, non-firm service is not a “lesser quality service” (Motion at 3); non-firm customers *make no commitment to the system* and bear no part of the system’s fixed costs. Non-firm customers *choose* to have the flexibility of switching to an alternative fuel to gain a price advantage or meet another business need. When non-firm customers are receiving service from the Company *it is the same quality of service provided to all customers*, and yet non-firm customers have not borne any costs associated with construction, maintenance and repair of the distribution system or all of the Company’s operations to maintain its function. Most importantly, the “equity” question is not what these customers are paying in relation to firm-service customers because non-firm customers *always* have the option of becoming firm customers (i.e., and whether a rate cap equal to 150% of the distribution rate is “fair” for non-firm customers as compared to firm customers). Rather, the equity question is about the value of the capacity that is paid for by firm customers and “borrowed” by non-firm customers, with the value being a function of the cost of fuel

alternatives available to the non-firm customer who wants to maintain the flexibility to switch their fuel usage. Thus, a cap of 200% of the firm distribution rate could provide a huge advantage to the non-firm customer, were the differential in the cost of natural gas and heating oil to increase significantly over time.

On August 1, the Division filed a response to SilentSherpa’s Motion recommending that the Commission abandon the value-of-service pricing structure contained in the Company’s existing rate tariff and establish a fixed price for non-firm service that equates to the Company’s existing distribution/demand rates for comparable customer classes (Division Response at 3). The Company recognizes that the Division’s proposal encompasses a balancing of interests between smaller firm customers and larger, non-firm customers and agrees that the Division’s proposal is a more reasonable structure and approach than that offered by SilentSherpa.

For comparison purposes, the table below highlights the various proposals. However, it is important to note that both SilentSherpa and the Division are proposing to set a fixed rate, where the amount listed for the Company is simply a cap that applies if and when the monthly price quoted to a customer under the existing rate tariff reaches the level of the cap.

For comparison purposes, the non-firm rates proposed for implementation should the Commission determine that emergency relief is appropriate are as follows

Customer Usage	National Grid		Division		SilentSherpa	
	Per therm	Per dth	Per therm	Per dth	Per therm	Per dth
Potential use is less than 25,000 therms per month	\$0.4279	\$4.279	M \$0.2315 LL \$0.2327 LH \$0.0756	M \$2.315 LL \$2.327 LH \$0.756	\$0.01	\$0.10
Potential use is more than 25,000 therms per month	\$0.1701	\$1.701	LL \$0.2327 LH \$0.0756 XL \$0.2045	LL \$2.327 LH \$0.756 XL \$2.045	\$0.01	\$0.10

			XH \$0.0668	XH \$0.668		
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Although the Company’s existing tariff rate (capped) and the Division’s rate may appear somewhat comparable, the Company has two main concerns with the Division’s proposal. First, the Division has submitted the pre-filed testimony of Mr. Bruce Oliver in the main case advocating for a termination of the Company’s existing, value-of-service rate structure, which the Company is proposing to maintain, albeit subject to a rate cap to address volatility on the oil markets. This means that the fundamental philosophy of non-firm pricing is a disputed issue in this proceeding. In the Division’s response to the SilentSherpa, the Division states that it “concludes that the value-of-service pricing approach is problematic due to the realities of today’s energy markets” (Division Response at 2). Thus, based on its fundamental conceptual aversion to value-of-service pricing, the Division proposes to abandon the pricing structure contained in the Company’s existing rate tariffs to implement interim relief in the form of a fixed, “cost-based” rate, which would necessarily implicate a range of complexities and judgment calls in actual implementation.⁵ As a result, the Division’s proposal goes well beyond the provision of “interim relief” and implements a structure, in advance of the conclusion of this adjudicatory proceeding, which is based on the Division’s philosophical preference in the underlying case. Even if the Commission finds interim relief to be necessary, it should not be implemented in a form that (1) vastly differs from the approved tariff-based structure, and (2) adheres to a changed philosophy clearly under dispute in the case.

⁵ Classifying of non-firm customers to a corresponding firm rate class requires knowledge of their total energy consumption and pattern of use (information the Company does not have for many of the non-firm customers). Charges to the non-firm customer can vary significantly based on the firm rate class they are assigned to, and hence, misclassification may result in disputes with customers over the appropriate charges.

Second, the Division states that, “the Division’s interim pricing recommendation is not a solution that the Division would want to support on an on-going basis” (*id.* at 3). The Division makes this statement because the “cost-based” rates upon which the Division would base the interim non-firm rates produce a *negative rate of return* from extra large C&I customers, which are the very type of customers who participate in the non-firm rate (Division Response at 3). Thus, the Division is not only proposing an “interim” solution that it would not recommend for implementation on a permanent basis, the Division is recommending a solution that does not collect adequate revenues from the customers forming the class, even under a firm rate structure.

Moreover, if the Commission determines that emergency action is necessary and appropriate, the Commission should not reduce the price any further (or in any material manner) than would occur with the implementation of the Company’s proposed rate cap. Every reduction in the non-firm rate has the direct and unavoidable result of taking revenues away from firm service customers to offset the costs that they are bearing in these difficult times to pay for the distribution system. The Company’s proposed rate cap maintains the current value-of-service structure until such time that the Commission is able to evaluate all of the evidence on this issue in the proceeding and to render a fair and reasoned public policy decision on the evidentiary record regarding the balancing of interests. In addition, the Company’s proposed rate cap reduces the cost for non-firm customers without lowering the revenues available to other customers to the level recommended by the Division or SilentSherpa. If the Commission ultimately decides to adopt a structure other than the Company’s proposed rate cap, non-firm customers will see further reductions; however, if the rate is reduced and then the Company’s proposal is

adopted, non-firm customers will see price increases induced by the Commission's action, rather than changes in market prices. Accordingly, the Company's proposal best preserves the Commission's ability to make fair and reasoned choices on this issue.

IV. Summary

The difficulty involved in the establishment of a fair, reasonable and appropriate pricing policy for non-firm service is not a new phenomenon. Fundamentally, the establishment of a fair, reasonable and appropriate price for non-firm service invokes a struggle between (1) the need to ensure that firm customers, who have paid the costs of constructing and maintaining the system, receive a "market value" benefit for the use of the system capacity, and (2) the need to establish a rate that encourages the efficient use of the system by customers who have alternative energy options in the marketplace and are important participants in the local economy.

In directing National Grid to include a proposal in this case to deal with the issues raised over time by SilentSherpa, the Commission demonstrated recognition that the proper balancing of these critical interests *cannot* be determined in isolation. See, In Re: SilentSherpa Petition Regarding Non-Firm Sales Service, Order No. 19115, at 4 (October 30, 2007). Yet, that is precisely what the SilentSherpa is asking the Commission to do in relation to its Motion for Emergency Relief.

In its order in Docket 3887, the Commission expressly directed that the determination of a fair and reasonable non-firm rate would be the subject of adjudication in this docket so that it could consider the issue within the context of a review of all of the Company's rates and costs, which gave recognition to the complexity of the

competing public interests involved in setting rates.⁶ Order No. 19115, at 4. This is especially true for rates that pit the interests of smaller customers against the interests of larger, but economically important customers, which is the case with non-firm rates. In fact, the appropriate structure for non-firm rates is an issue that has significant economic, ratemaking and policy implications, which are directly at issue in this proceeding. As a result, the Commission should be cautious in relying on the unsubstantiated claims of SilentSherpa, and in adopting *any* recommendations for “interim” non-firm rate relief before the issues are fully adjudicated before the Commission. In fact, even developing a response to the SilentSherpa’s Motion (and the Division’s response) requires a relatively detailed analysis of the substantive issues under adjudication in this case in relation to non-firm rates. Thus, adoption of the recommendations made by SilentSherpa and the Division, even on an interim basis, could effectively pre-determine issues in the case before the evidentiary record is complete and before the full ramifications of the decision are revealed through adjudication to the Commission. This would be prejudicial to the interests of all parties involved, especially the interests of firm customers who benefit

⁶ SilentSherpa claims that the Commission directed National Grid to file an alternative cost of service based rate design for non-firm service customers and that National Grid has not complied with this directive. See, SilentSherpa Motion at 2, paragraph 7 (citing, Order No. 19115, October 30, 2007). This is categorically untrue. In Order No. 19115, the Commission directed the Company to provide, in addition to its value of service based rate, an “alternative cost of service based rate design for non-firm customers.” Order No. 19115, at 4. In the testimony comprising the initial filing in this proceeding, the Company explained that it had relied on the cost of service based rate established for firm service customers to establish a proposed cap for its value of service pricing structure. See Testimony of Peter C. Czekanski, at page 20. The Commission did not in any way dictate, prescribe or pre-determine the characteristics of the Company’s “cost of service based rate.” Therefore, the fact that SilentSherpa does not agree with the proposal is not indicative of a lack of compliance, but is rather, indicative only of SilentSherpa’s non-acceptance of the rate proposed by the Company in accordance with the directive. In any event, this claim has no bearing on the nature or existence of the “immediate and irreparable harm” that non-firm customers are allegedly experiencing, which would be the basis of emergency relief.

from the non-firm revenues as well as non-firm customers, who may be falsely led into believing that the interim rate is indicative of future rates resulting from this adjudication.

WHEREFORE, the Company respectfully requests that the Commission decline SilentSherpa's request for emergency relief, as well as relief recommended by the Division. Alternatively, if the Commission deems it necessary to take action, the Company respectfully requests that the Commission limit the scope of relief by adopting the Company's proposed rate cap on an interim basis.

Respectfully submitted,

NATIONAL GRID

By its attorneys,



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