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June 6, 2013

VIA ELECTRONIC FILING

Hon. Jeffrey C. Cohen
Acting Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 13-G-0136 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of the National Fuel Gas Distribution Corporation for Gas Service

Dear Acting Secretary Cohen:

Multiple Intervenors hereby submits for filing in the above-referenced proceeding the annexed "Post-Hearing Brief of Multiple Intervenors in Support of Temporary Rates." The annexed Brief is submitted pursuant to the *Ruling on Schedule* issued herein on May 9, 2013.

Please contact me with any questions.

Respectfully submitted,

COUCH WHITE, LLP

Jay Goodman

Jay Goodman

JG/dap
Attachment
cc: Active Parties (via E-Mail; w/attachment)
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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of National Fuel Gas Distribution Corporation for Gas Service

Case 13-G-0136

POST-HEARING BRIEF OF MULTIPLE INTERVENORS IN SUPPORT OF TEMPORARY RATES

Dated: June 6, 2013

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PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of over 55 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, including the National Fuel Gas Distribution Corporation ("NFG") service territory, hereby submits its Post-Hearing Brief in support of temporary rates in Case 13-G-0136.[1] Multiple Intervenors' Brief is submitted in accordance with the *Ruling on Schedule* issued herein on May 9, 2013.

It has been approximately six years since NFG's costs, revenues and gas delivery rates were the subject of a comprehensive review by the New York State Public Service Commission ("Commission").[2] In Case 07-G-0141, NFG's last rate proceeding, a multi-year rate plan was not negotiated and the ensuing litigation resulted in a rate plan with a minimum term of one year.[3] Consistent with most rate proceedings resulting in a litigated outcome, the 2007 Rate Order did not establish any mechanism pursuant to which a portion of earnings above NFG's authorized return on equity ("ROE") would be shared with customers.[4] Since the 2007 Rate Order, NFG persistently has realized earnings well in excess of the 9.1% ROE that was

[1] Case 13-G-0136, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of the National Fuel Gas Distribution Corporation for Gas Service*.

[2] *See generally* Case 07-G-0141, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of the National Fuel Gas Distribution Corporation for Gas Service*.

[3] *See* Case 07-G-0141, *supra*, Order Establishing Rates for Gas Service (issued December 12, 2007) (hereinafter, "2007 Rate Order").

[4] *See* Case 13-G-0136, *supra*, Order Instituting Proceeding and to Show Cause (issued April 19, 2013) (hereinafter, "Show Cause Order") at 1 (noting that "there is no ROE earnings sharing mechanism" under the 2007 Rate Order and, therefore, NFG "retains all excess earnings when they occur").

authorized by the Commission in the 2007 Rate Order.[5] NFG has retained all such "excess" earnings for the benefit of shareholders.

During the same time that NFG has realized returns substantially in excess of its authorized ROE, the utility has been recording millions of dollars in deferrals (allowed under the existing rate plan) that ultimately will be borne by customers. If this situation is left unmodified, such deferrals will continue to grow, potentially subjecting customers to significant, detrimental rate impacts when rates next are reset. Thus, at a time when NFG is reaping earnings well above the ROE authorized by the Commission, customers are becoming more and more indebted to the utility. Commission action is needed.[6]

In opposition to temporary rates, NFG claims credit for operating efficiently under its existing rate plan, and for not seeking to increase delivery rates since the 2007 Rate Order was issued. (*See*, *e.g.*, Tr. 13-14.)[7] Multiple Intervenors neither challenges nor endorses such claims here. Even if, *arguendo*, NFG's "excess" earnings are attributable solely to its own actions, it would be of little to no relevance in terms of whether rates should be made temporary on a prospective basis. NFG already has been rewarded amply for any efficiencies, having

[5] *See* Case 07-G-0141, *supra*, 2007 Rate Order at 41 (setting NFG's authorized ROE at 9.1% based on a 44.35% equity ratio).

[6] The Commission recognized in its Show Cause Order that these results (*i.e.*, NFG realizing excess earnings while deferral balances owed by customers continue to escalate) "should they occur, would not be in the public interest and the possibility of their recurring in the coming rate year requires our action." Case 13-G-0136, *supra*, Show Cause Order at 4.

[7] References to the transcript of the evidentiary hearing conducted in this proceeding are preceded by the notation, "Tr." References to exhibits entered into the evidentiary record herein are preceded by the notation, "Ex."

realized returns well in excess of its authorized ROE, with 100% of such "excess" earnings retained for the benefit of shareholders.[8]

Importantly, NFG has no legal right or claim to continue operating indefinitely under a rate plan that is producing returns well above its authorized ROE, especially when the utility is recording ever-accumulating deferrals to be borne by customers.[9] Pursuant to its statutory authority under New York Public Service Law, the Commission may direct jurisdictional utilities such as NFG to file the information necessary to establish new delivery rates if and when it appears that existing delivery rates may not be just and reasonable.[10]

NFG's customers (residential and non-residential) have endured – and continue to endure – a very-challenging economy in Western New York. Where (i) NFG's existing rate plan has not been reviewed comprehensively for approximately six years, (ii) the utility persistently is realizing returns well above its authorized ROE, (iii) NFG is projected to continue realizing returns above its authorized ROE, and (iv) deferrals allowed under the rate plan are accumulating and expected to continue to grow in magnitude, the Commission has a responsibility to take action to protect customers.

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[8] The Commission previously has stated that its policies are intended to promote efficient utility operations "because [such efficiencies] can benefit ratepayers. If all efficiency gains are kept by shareholders, our regulatory policy is thwarted, not fulfilled." Case 06-E-1433, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric Service*, Order Making Temporary Rates Subject to Refund (issued March 1, 2007) (hereinafter, "O&R Show Cause Order") at 20.

[9] NFG is well aware that its rates may be made temporary when projected to produce returns in excess of its authorized ROE. *See*, *e.g.*, Case 00-G-1495, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of National Fuel Gas Distribution Corporation*, Order to Show Cause (issued August 31, 2000) at 2 (finding that a review of NFG's "financial statements indicates the company may be earning in excess of a reasonable return and a projection forward suggests that this condition may continue into the near future") and 3 (holding that the "continuation of current rates will not be tolerated if rates are found to be unjust and unreasonable").

[10] *See* N.Y. Pub. Serv. Law §§ 66(12), 72, 114.

Accordingly, for the reasons set forth herein, the Commission should issue an order making NFG's existing gas delivery rates temporary, subject to refund, and instituting further proceedings to resolve rate issues on a more permanent basis. Specifically, such order should: (a) make rates temporary by at least $21 million annually to protect customers; and (b) direct NFG to file rate case quality information by a date certain, so that a full examination of its gas delivery business may be commenced, and permanent delivery rates established, within a reasonable period of time.

ARGUMENT

POINT I

NFG'S DELIVERY RATES EXCEED LEVELS THAT ARE JUST AND REASONABLE

The Commission instituted this proceeding because NFG's reported returns have shown a consistent, upward trend at levels substantially in excess of the utility's authorized ROE of 9.1%. Most recently, Department of Public Service Staff ("Staff") determined that NFG realized an ROE of 13.15% for the fiscal year ("FY") ended September 30, 2012.[11] The Commission also noted that NFG is continuing to defer certain expenses for future recovery from customers, and that those balances will continue to grow if left unchecked.[12]

[11] Case 13-G-0136, *supra*, Show Cause Order at 2.

[12] *Id.* The expenses that NFG recently has been deferring for future recovery from customers include pension, other post-employment benefits ("OPEBs"), and site investigation and remediation ("SIR") expenses. The Commission noted that for the year ended September 30, 2012, NFG earned a 13.15% ROE (pursuant to Staff's calculation) while recording net deferrals of $7.6 million, which increased the amounts owed by customers for pension, OPEBs and SIR expenses to $13.1 million. *Id.*

Based on the combination of earnings that are anticipated to remain well in excess of the 9.1% authorized ROE, and deferral balances that will "continue to escalate," the Commission concluded that NFG's customers might be paying rates that exceed just and reasonable levels.[13] Accordingly, the Commission directed NFG to accept temporary rates subject to refund effective June 1, 2013, or show cause why such temporary rates should not be adopted herein. (*Id.* at 7.) NFG declined to accept temporary rates, thereby necessitating the filing of testimony, an evidentiary hearing, and the submission of post-hearing briefs.

A. NFG's Historic and Projected Returns Justify the Use of Temporary Rates to Protect Customers

Staff updated its analysis of NFG's historic returns using information presented in the utility's response to the Show Cause Order.[14] Initially, the Staff Temporary Rates Panel ("TRP") noted that NFG reported returns of 10.99%, 10.97%, and 12.40% for FY 2010, FY 2011, and FY 2012, respectively, based on a 50% equity ratio. (Tr. 131.) Based on its analyses, Staff made certain adjustments to the returns reported by NFG. (Tr. 131-33.)[15]

Staff concluded that NFG actually realized returns of 11.10%, 11.25%, and 12.41% during FY 2010, FY 2011, and FY 2012, respectively – *i.e.*, at least 200 basis points, and as much as 331 basis points, above NFG's 9.1% authorized ROE. (Tr. 20.) Staff also examined

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[13] *Id.* at 4.

[14] *See* Case 13-G-0136, *supra*, Response of National Fuel Gas Distribution Corporation to Order to Show Cause (dated May 8, 2013) at 14 (hereinafter, "NFG Response").

[15] Staff recommends using a 48% equity ratio to calculate NFG's returns, instead of the 50% ratio utilized by the utility. (Tr. 133.) While Multiple Intervenors does not oppose the prospective use of a 48% equity ratio for purposes of calculating appropriate, permanent rate levels, a 44.35% equity ratio should be used to calculate historic returns necessitating temporary rates. Although NFG's actual capital structure has changed since the 2007 Rate Order was issued, the utility's current delivery rates were established based on a 44.35% equity ratio for ratemaking purposes and, therefore, any earnings calculations performed while the existing rate plan is in effect should reflect the capital structure upon which current delivery rates are based.

and adjusted NFG's projected costs, and concluded that the utility's earnings would remain relatively level to produce a return of 11.06% for the rate year ending May 31, 2014 ("RY 2014"). (Tr. 123-24.)

NFG disputed the adjusted FY 2012 earnings reported by the Staff TRP, asserting that a "reasonably calculated" return for that period is about 12.06%. (Tr. 25.) According to NFG witness Eric Meinl, such earnings are in-line with other investor-owned utilities in New York State and, therefore, are not excessive. (*Id.*) NFG also argued that Staff erred by relying on the 44.35% equity ratio established in the 2007 Rate Order, which the utility claimed is outdated. (*Id.* at 31-32.)[16] With respect to RY 2014, NFG claimed that Staff's earnings projection is in error and unreliable, and that the utility will realize a return of approximately 9.22%. (*Id.* at 67; Ex. 3 at Exhibit RLT-1, Schedule 1, Sheet 1.)

Notwithstanding NFG's criticism of the Staff analysis, both NFG and Staff agree that the utility realized a FY 2012 return of at least 12.06%, thereby exceeding the utility's authorized ROE by approximately 300 basis points. NFG retained 100% of those "excess" earnings for the benefit of shareholders. Although Staff and NFG disagree with respect to, *inter alia*, the utility's projected return for RY 2014, the Commission need not resolve those controversies to find that current delivery rates should be made temporary, subject to refund.[17]

[16] It is not clear to Multiple Intervenors why the equity ratio upon which delivery rates were calculated should be deemed outdated, but not the delivery rates themselves. Much has changed since 2007, when those delivery rates were set. Making rates temporary simply protects customers while NFG's costs, revenues and existing rates can be examined comprehensively and permanent rates established.

[17] *See*, *e.g.*, Case 01-E-0359, *Petition of New York State Electric & Gas Corporation for Approval of its Electric Price Protection Plan* (issued January 10, 2002) (hereinafter, "NYSEG Show Cause Order") at 11 (concluding that: "Considering that temporary rates can be retroactively adjusted once a permanent rate level is determined, we will not at this time resolve the numerous arguments raised by the parties concerning projected revenues, capital

Instead, the Commission need only to find that there is a "reasonable basis" to believe that customers are being harmed by the utility's current delivery rates.[18] Notably, the Commission has concluded that colorable challenges to the reasonableness of a utility's rates make "the establishment of temporary rates … not only in the public interest, but essential."[19]

Such basis clearly has been provided here. Staff produced credible evidence that NFG persistently has realized returns well in excess of its authorized ROE and, absent Commission action, will continue to realize returns that exceed such ROE level by at least 200 basis points. Thus, there is compelling evidence that, based on NFG's current costs and delivery volumes, existing delivery rates are too high and should be reduced materially. At a bare minimum, to the extent NFG is authorized to continue operating under current rates, a meaningful portion of any earnings realized in excess of the utility's authorized ROE should be shared with customers, possibly as an offset against accumulated deferrals. Under no circumstances should the Commission decline to make rates temporary, thereby subjecting customers to the possibility of rates that are unjust and unreasonable while the utility continues to record deferrals that ultimately will be borne by customers.

In light of the harm that NFG's customers may suffer (or have suffered) as a result of gas delivery rates that are neither just nor reasonable, the Commission has the responsibility to act immediately. Accordingly, Multiple Intervenors urges the Commission to make a portion of NFG's rates temporary, subject to refund. Specifically, as described further in

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expenditures, operations and maintenance expenses, and other components of revenue requirement").

[18] *See generally id.*; Case 06-E-1433, *supra*, O&R Show Cause Order at 7 (concluding that "where there is a reasonable basis to believe that ratepayers are currently being harmed by the level and structure of rates, the institution of temporary rates is an important tool for ratepayer protection that should be used now to further the public interest").

[19] Case 01-E-0359, *supra*, NYSEG Show Cause Order at 11 (citation omitted).

Point II, *infra*, Multiple Intervenors recommends that the Commission make at least $21 million of NFG's current delivery revenues temporary.

B. Increasing Deferral Balances Provide an Additional Basis for Temporary Rates

The Staff TRP estimated that balances deferred for future recovery from customers will increase by approximately 36% in FY 2013, from $25.797 million to approximately $35.099 million. (Tr. 211-12.) In its Show Cause Order, the Commission stated that increasing deferral balances, combined with returns that exceed the authorized ROE, provide support for a conclusion that NFG customers may be "paying higher rates than are just and reasonable."[20] In addition to delivery rates that have produced – and are projected to continue to produce – returns well in excess of the utility's authorized ROE, the existence of ever-increasing deferral balances provides an additional basis for making NFG's rates temporary.

In Case 06-E-1433, the Commission determined that the electric delivery rates of Orange & Rockland Utilities, Inc. should be made temporary based, in part, on the existence of rising deferral balances. Specifically, the Commission determined that a portion of O&R's rates should be made temporary because: (a) deferral balances were projected to increase sharply; (b) the utility likely would continue to realize "excess" earnings; and (c) shareholders would retain all such earnings because there was no mechanism in place for sharing "excess" earnings.[21] Concluding that such circumstances compelled the use of temporary rates to protect customers, the Commission explained: "It is the combination of the earnings levels and the growing deferral

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[20] Case 13-G-0136, *supra*, Show Cause Order at 4.

[21] Case 06-E-1433, *supra*, O&R Show Cause Order at 10-11.

balance that represents a unique problem, requiring the immediate, emergency action of a temporary rate order to protect ratepayers in this case."[22]

The same outcome should apply here. NFG persistently has realized returns substantially in excess of its authorized ROE, while continuing to defer additional costs for future recovery from customers.[23] Under these circumstances, it would be unreasonable, and contrary to the public interest, for the Commission to allow NFG to continue operating under its existing rate plan absent a comprehensive review of its costs, revenues and delivery rates. Indeed, absent Commission action, it seems clear that NFG will continue to (i) realize returns substantially in excess of its 9.1% authorized ROE, (ii) retain 100% of such "excess" returns for the benefit of shareholders, and (iii) record increasing deferrals that customers will owe, with interest, to the utility.

The continued recording of deferral balances highlight the inequity of the present situation. For certain items, such as pension, OPEBs and SIR expenses, NFG's costs apparently exceed existing rate allowances. NFG's shareholders currently are protected, however, because the utility is authorized to record deferrals which ultimately will be recovered from customers with interest. Significantly, however, for certain other items, NFG's costs now are below existing rate allowances, thereby contributing to realized returns well in excess of the utility's authorized ROE. For those items, customers have no protection – absent Commission action, NFG will continue to retain 100% of such "over-collections" for the benefit of shareholders.

Quite simply, NFG's existing rate plan has become stale, due in part to the passage of time and changed circumstances. To the extent NFG is responsible for a portion of

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[22] *Id.* at 11.

[23] In addition to the deferral balances themselves, customers also presumably will liable to NFG for carrying costs, or interest, associated therewith.

the “excess” returns realized over the years, it already has been rewarded by being allowed to retain 100% of such earnings for the benefit of shareholders. Typically, when a rate plan becomes stale due to increasing costs, utilities seek rate relief. Here, where the rate plan is stale because delivery rates produce revenues well in excess of costs, and the utility has no incentive to seek new rates, it is up to the Commission to intervene and make rates temporary, subject to refund, pending a comprehensive review of the existing rate structure. NFG has no right to continue reaping “excess” returns indefinitely.

In opposition to temporary rates, NFG claims that its deferral balances are “not a cause for alarm” because they are modest relative to the regulatory assets held by other utilities, and were accumulated pursuant to Commission orders and policies. (Tr. 43-44.) The utility argues that a focus on the overall level of deferral balances is misplaced because such focus does not address whether customers are harmed. (Tr. 44.) According to NFG, neither current nor projected deferral balances will harm its customers because the utility purportedly has retail delivery rates that are “lower than reasonable alternatives.” (*Id.*)

These arguments are inapt. The reasonableness of NFG’s rates, earnings and/or deferral balances can be determined only by examining NFG’s costs, revenues, and rate structures. A comparison to other utilities is meaningless, given that costs and other factors vary widely from utility to utility. For instance, NFG’s service territory and cost structure is markedly different from that of Consolidated Edison Company of New York, Inc. In any event, the Commission has rejected the comparable earnings approach to evaluating the reasonableness of a utility’s earnings.[24] Notably, however, NFG does not dispute that its deferral balances will continue to increase, choosing instead to focus on the authority underlying the accrual of such

[24] *See*, *e.g.*, Case 06-E-1433, *supra*, O&R Show Cause Order at 10 (stating that the comparable earnings methodology has “not been traditionally accepted by this Commission”).

deferrals. NFG has advanced no credible rebuttal to Commission precedent that temporary rates may be justified by the amount, and rate of increase of, deferred balances.[25]

Based on its positions, NFG appears to believe that it is entitled to operate under its existing rate plan for as long as it pleases. Such belief, if held, is unwarranted and not supported by law. As detailed, *supra*, just as a utility may seek to increase rates when existing revenues are deemed deficient, the Commission possesses ample authority to make delivery rates temporary, and ultimately reduce them, if existing revenues are shown to be excessive. The fact that NFG is continuing to record deferral balances owed by customers at a time when it is reaping returns well in excess of its authorized ROE and not sharing any of those returns with customers only heightens the urgency under which the Commission should act to make rates temporary.

Accordingly, in light of the utility's historic and projected earnings, and its growing deferral balances, the Commission should make a portion of NFG's rates temporary, subject to refund, pending the conclusion of a comprehensive review of the utility's rates. Such remedy would protect customers during the pendency of that proceeding, without causing any undue harm to NFG.[26]

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[25] Multiple Intervenors does not challenge here NFG's authority to record deferral balances owned by customers under the utility's existing rate plan. Rather, Multiple Intervenors objects to NFG being permitted to continue operating prospectively under that rate plan, and to continue recording ever-increasing deferrals, when current delivery rates clearly are producing excessive returns.

[26] *See* Case 06-E-1433, *supra*, O&R Show Cause Order at 11 (explaining that "[t]he administration of temporary rates provides for the complete protection of the Company, so that it will not suffer adverse effects through this process").

POINT II

THE COMMISSION SHOULD MAKE AT LEAST $21 MILLION OF CURRENT DELIVERY RATES TEMPORARY SUBJECT TO REFUND

The Commission takes a "conservative approach" to determining the level at which temporary rates should be set.[27] In Case 10-E-0050, for instance, the Commission adopted a recommendation by the presiding Administrative Law Judges ("ALJs") that a portion of rate relief provided to Niagara Mohawk Power Corporation d/b/a National Grid ("Niagara Mohawk") be made temporary subject to refund pending the results of an audit of National Grid's service company expenses.[28] Notably, although Staff recommended that $26 million would provide an adequate remedy for potential issues associated with National Grid's service company expenses, the presiding Administrative Law Judges ("ALJs") instead recommended that $50 million of Niagara Mohawk's rate relief – or approximately double the adjustment advocated for by Staff – should be made temporary subject to refund.[29] The ALJs reasoned that the level of temporary rates should reflect the uncertainty of estimates regarding the potential amount that should be refunded to customers: "Temporary rates can be established at a level large enough to encompass a reasonable estimate of the outside potential for adjustments, while avoiding the potential for unwarranted adjustments."[30] The Commission agreed, explaining that

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[27] Case 01-E-0359, *supra*, NYSEG Show Cause Order at 11.

[28] Cases 10-E-0050 *et al.*, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation for Electric Service*, Order Establishing Rates for Electric Service (issued January 24, 2011) at 9-10.

[29] Cases 10-E-0050 *et al.*, *supra*, Notice for Filing Exceptions and Recommended Decision (issued November 17, 2010) at 33.

[30] *Id.*

"temporary rates in the amount of approximately twice Staff's original proposed macro adjustment ($26 million) are a reasonable balance between the concerns of potential liability, on the one hand, and unwarranted financial exposure on the other."[31]

Multiple Intervenors recommends that the same general approach be followed here. The Staff TRP determined that 9.0% would be a reasonable return for NFG during RY 2014, if its rates were reset today. (Tr. 124.) Based on that analysis, and its projection that NFG will realize earnings of 11.06% for RY 2014, Staff estimated that the utility would earn approximately $10.3 million of excess delivery revenues in RY 2014, absent any change to current delivery rates. (*Id.*) Thus, making rates temporary by at least $21 million is equivalent to approximately double Staff's estimate of "excess" delivery revenues in RY 2014 and is consistent with the precedent established recently involving Niagara Mohawk.

In response to questions posed by ALJ Prestemon at the evidentiary hearing, the Staff TRP opined that customers may be protected adequately if the Commission makes only $10.3 million of current rates temporary. (Tr. 248.) Multiple Intervenors respectfully disagrees. Staff's analysis reflects certain assumptions and uncertainties, as conceded by Staff – *i.e.*, the TRP stated numerous times that it lacked sufficient time to complete its analysis of NFG's books, which necessarily means that the estimates developed by that Panel reflect some degree of uncertainty. (*See*, *e.g.*, Tr. 148, 156, 175-76.) Given this imprecision, Staff's estimation that NFG will realize approximately $10.3 million of excess earnings in the upcoming year may be over- or under-stated. In order to ensure that customers are fully protected, not only from excessive rates but also inaccuracies in Staff's analysis, the amount by which rates should be made temporary should be well in excess of the $10.3 million estimate.

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[31] Cases 10-E-0050, *supra*, Order Establishing Rates for Electric Service at 36.

In evaluating the amount that NFG's rates, and resulting revenues, should be made temporary, the Commission should err on the high-side in light not only of the imprecision of Staff's estimate, but also the asymmetrical outcomes if said estimate proves to be inaccurate. For instance, if Staff's estimate of $10.3 million is adopted herein and rates are made temporary by only that amount, and the Commission ultimately determines that rates are excessive by an amount *less* than $10.3 million, NFG would suffer no harm whatsoever.[32]

Significantly, the same cannot be said of the converse situation. If rates are made temporary by $10.3 million, and the Commission ultimately concludes that existing rates are excessive by a greater amount, customers would have no recourse to refunds above and beyond the $10.3 million made temporary. Thus, because the harm to customers of making rates temporary by an inadequate amount is far greater than the harm, if any, of making rates temporary by a conservatively-high amount, the Commission should err on the side of ensuring that rates are made temporary by as much, if not more than, the maximum conceivable adjustment when permanent rates are adopted.

As described above, the Commission has explained that it will use conservative estimates to determine the amount of delivery rates that should be made temporary. Consistent with this approach, and with its resolution of the temporary rates issue in Case 10-E-0050, the Commission should not establish temporary rates that are limited to the exact amount recommended in a Staff analysis that may be inaccurate. Instead, the Commission should reflect the uncertainties inherent in Staff's analyses by setting temporary rates at a level (*i.e.*, at least $21 million) that exceeds by a reasonable margin the projected RY 2014 "excess" earnings. The

[32] *See*, *e.g.*, Case 01-E-0359, *supra*, NYSEG Show Cause Order at 11.

Commission also should direct NFG to file rate-case quality information sufficient to enable a review of its costs, revenues and rate structures for the permanent rates phase of this proceeding.

CONCLUSION

For all the foregoing reasons, Multiple Intervenors urges the Commission to: (a) make at least $21 million of NFG's current delivery rates temporary, subject to refund; and (b) direct the utility to file rate case quality information that may be used in the comprehensive review of its costs and revenues that should commence immediately following this proceeding.

Dated: June 6, 2013
Albany, New York

Respectfully submitted,

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