

## Potential Arguments for NPHA Regarding Proposed Director's Order 35B

### Relating to Full Pass Through of Utilities Costs to Concessioners:

- These additional costs if passed on to the visitor will likely deter visitation to parks at a time when there is widespread agreement that more and more Americans are not reaping the myriad benefits of spending time in their national parks.
- Utilities are vital for other activities in the parks besides visitor services, including NPS resource management. Base costs of providing utility services should be assessed against those programs, and only the supplemental costs of additional utility service should be assessed to concessioners. The burden of core utility needs should not fall on concessioners.
- The effect of this order will be most severe in areas where NPS is the only provider of utilities, areas where visitation is already impacted by other high costs such as transportation.
- Outside parks, utility costs are typically reduced through grants and attractive loan programs offered by federal and state agencies. Thus, concessioners needing NPS-provided utilities in parks will likely be paying far more than they would be if they were operating the same business outside the parks from utility providers qualifying for assistance.
- The order would put concessioners at a disadvantage against businesses operating in gateway communities.
- Concessioners wishing to improve their energy efficiency, a legitimate strategy to reduce utility costs, would be deterred from doing so until and unless LSI provisions are finalized and reflect the value of investments in utility reduction demand.
- Concessioners operate historic structures that have costly utilities, but add to the overall ambience of the park that draws visitors. How fair is it that the burden to provide access to these iconic places is solely on the concessioner?
- Utility capital costs are now funded through the appropriation process. There is no provision in the order that would earmark funds levied to recover utility capital costs from concessioners for a reserve/replacement account, so replacement and improvements of utility infrastructure would still be done by appropriation of general funds. This suggests that the concessioner-paid capital cost assessments would be used for NPS operating expenses, not eventual replacement of infrastructure.
- Outside parks, there is a check on utility costs provided by state utility regulation agencies and/or bond referendums. In the parks, there is no such accountability.
- NEPA requires full consideration of federal decisions, assessing direct environmental consequences and other impacts. NPS needs to insure that its utility infrastructure planning process meets NEPA requirements for scoping and involvement of affected interests.
- In order to guard against unintended economic impacts on concessioners and gateway communities, maximum utility rates should be established at 1xx% of

national or regional rates.

Questions to Address:

- Will the order affect all groups operating in the parks, including “friends groups” and cooperating associations?
- How will NPS decide on the life cycle of utility capital investments? How will phenomenon such as fires be considered and reflected – especially if park policies cause or allow substantial damage to utility infrastructure?
- Will this policy burden some park visitors unfairly – those utilizing concessioner services – to achieve goals benefitting all park visitors, such as cleaner air and water?
- Will increased cost of utilities prompt concessioners to restrict and reduce some operations that now generate no income, such as general visitor access to restrooms?
- Are there significant impediments to use of the “waiver” authority incorporated into the draft of DO 35B by NPS?

“Big Picture” Questions

- Should NPHA seek to block DO 35B or to modify it to control its potential impacts?
- If OMB and the IG office at Interior are driving this proposal, will comments to NPS significantly influence the eventual outcome?
- What remedies beyond the “rule-making” process are open to NPHA and its members?