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STATE OF NEW YORK	
DEPT. OF PUBLIC SERVICE	
DATE	12/18/01
CASE NO.	DLB 1634-270
EX	KeySpan

October 16, 2001

## BY FACSIMILE AND FEDERAL EXPRESS

Honorable Janet Hand Deixler  
Secretary to the Public Service Commission  
New York State Board on Electric Generation  
Siting and the Environment  
3 Empire State Plaza  
Albany, New York 12223-1350

re: Glenwood Landing Energy Center: Petition of KeySpan Energy  
Development Corporation for a Declaratory Ruling

Dear Secretary Deixler:

I write to provide you with updated information concerning the petition ("Petition") captioned above. The Petition was filed by cover letter dated August 15, 2001, and requests a declaratory ruling concerning the construction of a 79.9 MW peaking station ("Peaking Station"). The instant letter has been served as shown in the accompanying certificate of service, and, by permission of your office as conveyed to me by Ms. Cynthia Shorts, by facsimile to you today followed by overnight courier.

The material facts of the Petition remain unchanged. However, KeySpan Energy Development Corporation ("Petitioner") no longer intends to acquire the property as stated in the Petition (see Petition, p. 5). Instead, the Long Island Power Authority ("LIPA") will condemn the Peaking Station property pursuant to its powers of eminent domain, and then lease the property to Petitioner for construction of the proposed Peaking Station.

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## ARNOLD & PORTER

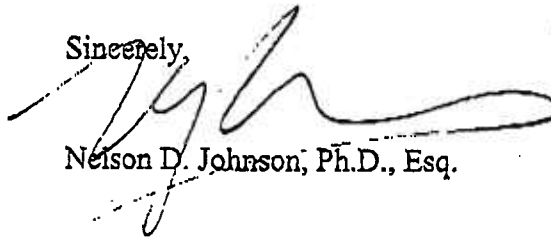
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Honorable Janet Hand Deixler  
October 16, 2001  
Page 2

I respectfully submit that LIPA's condemnation of the property does not affect in any way the analysis set forth in the Petition. To the extent that the condemnation is relevant at all, it strengthens the Petition because LIPA is not a direct or indirect parent, subsidiary or sibling corporation of the entities constructing and operating the Peaking Station.

Thank you very much for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "N. Johnson", is written over a horizontal line.

Nelson D. Johnson, Ph.D., Esq.

cc: Steven Blow, Esq.

520

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## ARNOLD & PORTER

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Honorable Janet Hand Deixler

October 16, 2001

Page 3

bcc: Michael B. Gerrard, Esq.  
Stephen Kass, Esq.  
Donna Riccobono, Esq.

521

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16th day of October, 2001, I caused a true and correct copy of the annexed letter of even date concerning the Glenwood Landing Energy Center: Petition of KeySpan Development Corporation for a Declaratory Ruling to be served by overnight mail upon the following:

Mr. Richard Arnold  
Glen Head Glenwood Business  
Association  
329 Glen Cove Avenue  
Sea Cliff, NY 11579

Mr. Dennis Buckley  
North Shore Environmental Alliance  
One Robert Lane  
Glen Head, NY 11545

Ray Cowen, P.E.  
New York State Department of  
Environmental Conservation  
SUNY Stony Brook  
Loop Road  
Building 40, Room 121  
Stony Brook, NY 11790-2356

Ms. Marie Coyle  
Glen Cove Chamber of Commerce  
c/o The Regency  
94 School Street  
Glen Cove, New York 11542

Erin M. Crotty, Commissioner  
New York State Department of  
Environmental Conservation  
625 Broadway  
Albany, NY 12233

Mr. Al D'Agostino  
Nassau County Planning Commission  
400 County Seat Drive  
Mineola, NY 11501

Ms. Ann DiPietro  
Sea Cliff Civic Association  
c/o Village Hall, Sea Cliff Avenue  
Sea Cliff, NY 11579

Gregory J. Giammalvo, Esq.  
Town Attorney  
54 Audrey Lane  
Oyster Bay, NY 11771

Stanley B. Klimberg, Esq.,  
General Counsel  
Long Island Power Authority  
333 Earle Ovington Blvd., Suite 403  
Uniondale, NY 11553

Ms. Sarah Meyland  
Citizens Campaign for the Environment  
225A Main Street - Suite 2  
Farmingdale, NY 11735

The Honorable Claudia Moyne  
Mayor, Incorporated Village of Sea Cliff  
Village Hall, Sea Cliff Avenue  
Sea Cliff, NY 11579

Mr. Brian Muellers  
Nassau County Legislator, District 18  
1 West Street  
Mineola, NY 11501

Nassau County Department of Health  
240 Old Country Road  
Mineola, NY 11747

522

Natural Resources Defense Council  
40 West 20th Street  
New York, NY 10011

New York Lawyers for Public Interest  
151 West 30<sup>th</sup> Street - 11<sup>th</sup> Floor  
New York, NY 10001-4007

New York Public Interest Research  
Group  
9 Murray Street  
New York, NY 10007

The Honorable May Newburger  
Supervisor, Town of North Hempstead  
220 Plandome Road  
Manhasset, NY 11030

Ms. Martha S. Offerman  
Town Clerk, Town of Oyster Bay  
54 Audrey Lane  
Oyster Bay, NY 11771

Ms. Lynn Oliva  
Hempstead Harbor Protection  
Committee  
220 Plandome Road  
Manhasset, NY 11030

Planning Board  
Town of Oyster Bay  
54 Audrey Lane  
Oyster Bay, NY 11771

Planning & Development Dept.  
Town of Oyster Bay  
54 Audrey Lane  
Oyster Bay, NY 11771

Zoning Board of Appeals  
Town of Oyster Bay  
54 Audrey Lane  
Oyster Bay, NY 11771

Dr. Robert Root  
North Shore School District  
112 Franklin Avenue  
Sea Cliff, NY 11579

Mr. Kent P. Sanders  
Environmental Analyst  
Division of Environmental Permits  
New York State Department of  
Environmental Conservation  
625 Broadway - 4<sup>th</sup> Floor  
Albany, NY 12233-1750

Ms. Lynda Schroeder  
Coalition to Save Hempstead Harbor  
247 Sea Cliff Avenue  
Sea Cliff, NY 11579

The Honorable John Venditto  
Supervisor, Town of Oyster Bay  
54 Audrey Lane  
Oyster Bay, NY 11771

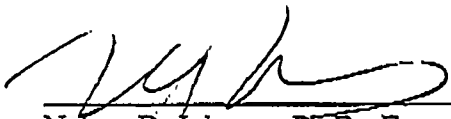
I hereby certify that on the 16th day of October, 2001, I also caused a true and correct copy of the annexed letter of even date concerning the Glenwood Landing Energy Center: Petition of KeySpan Development Corporation for a Declaratory Ruling to be served by certified mail upon the following:

523

Ms. Cecile McCann  
Glenwood/Glen Head Civic Association  
P.O. Box 476  
Glenwood Landing, NY 11547

Mr. Herman A. Stuhl  
New York Institute of Legal Research  
P. O. Box 398  
Yorktown Heights, NY 10598-0398

Dated: October 16, 2001



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August 15, 2001

## BY FEDERAL EXPRESS

Honorable Janet Hand Deixler  
Secretary to the Public Service Commission  
New York State Board on Electric Generation  
Siting and the Environment  
3 Empire State Plaza  
Albany, New York 12223-1350

Re: Glenwood Landing Energy Center

Dear Secretary Deixler:

Enclosed is the original and five copies of the Glenwood Landing Energy Center: Petition of KeySpan Energy Development Corporation for a Declaratory Ruling from the Board on Electric Generation Siting and the Environment ("Board") and a certificate of service.

Petitioner has served copies of this Petition on the following entities: Long Island Power Authority, New York Institute of Legal Research, New York Department of Environmental Conservation, New York Public Interest Research Group, New York Lawyers for Public Interest, Natural Resources Defense Counsel, Glenwood/Glen Head Civic Association, North Shore Environmental Alliance, Citizens Campaign for the Environment, Nassau County Legislator for District 18, Nassau County Planning Commission, Coalition to Save Hempstead Harbor, Hempstead Harbor Protection Committee, North Shore School District, Sea Cliff Civic Association, the Town of North Hempstead, Glen Cove Chamber of Commerce, Nassau County Department of Health, Glen Head Glenwood Business Association, the Incorporated Village of Sea Cliff, and the Town of Oyster Bay, all as set forth more fully in the enclosed certificate of service. Petitioner will serve a copy of this Petition upon additional parties as the Board may direct.



525

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## ARNOLD & PORTER

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Honorable Janet Hand Deixler  
August 15, 2001  
Page 2

Thank you for your assistance with this matter. Please contact me if you should have any questions.

Respectfully submitted,



Nelson D. Johnson, Ph.D., Esq.

Enclosure

526

STATE OF NEW YORK  
BOARD ON ELECTRIC GENERATION SITING AND THE ENVIRONMENT

Glenwood Landing Energy Center:  
Petition of KeySpan Energy Development  
Corporation for a Declaratory Ruling

Case Number:

PETITION OF KEYSpan ENERGY DEVELOPMENT CORPORATION  
FOR A DECLARATORY RULING

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Facsimile (212) 715-1399  
Attorneys for Petitioner KeySpan  
Energy Development Corp.

527

**STATE OF NEW YORK  
BOARD ON ELECTRIC GENERATION SITING AND THE ENVIRONMENT**

**Glenwood Landing Energy Center:  
Petition of KeySpan Energy Development  
Corporation for a Declaratory Ruling**

**PETITION FOR A DECLARATORY RULING**

KeySpan Energy Development Corp. ("Petitioner") hereby petitions the New York State Board on Electric Generation Siting and the Environment ("Board") for a declaratory ruling that Petitioner's construction of a 79.9 MW peaking station ("Peaking Station") will not be "the construction of a major electric generating facility" within the meaning of section 162(1) of Article X of the New York Public Service Law. The requested ruling is consistent with recent decisions of the Board and the Appellate Division of the New York Supreme Court, and with applicable statutes and regulations. In addition, the ruling will directly benefit the State of New York and the communities on Long Island by facilitating Petitioner's efforts to provide needed capacity to prevent energy shortfalls during periods of peak energy consumption.

**I. BACKGROUND**

Petitioner is a corporation organized under the laws of Delaware. It is a wholly-owned subsidiary of KeySpan Energy Corp., which itself is a wholly-owned subsidiary of KeySpan Corp. Petitioner proposes to construct a state-of-the-art, 79.9 MW Peaking

528

Station in Glenwood Landing in the Town of Oyster Bay, Nassau County. Petitioner plans to bring the Peaking Station on-line by the summer of 2002, by connecting it to the transmission system of the Long Island Power Authority ("LIPA"). For its initial twenty-five years, the Peaking Station will sell 100% of its energy, capacity and ancillary services to LIPA pursuant to a power purchase agreement. At or about the time the Peaking Station becomes operational, Petitioner intends to transfer it to a newly-formed and wholly-owned subsidiary which, for purposes of this petition, will be designated KeySpan Glenwood Energy Center LLC ("Glenwood Energy").

The proposed Peaking Station will be powered by two General Electric LM6000 simple-cycle natural gas combustion turbines with distillate fuel backup, each with a name-plate rating of 47 MW for a total theoretical capacity of 94 MW. The available capacity will be somewhat less than the theoretical capacity, since station operations will require 3 MW from each generator. Petitioner will further reduce the Peaking Station's capacity by entering into enforceable agreements to limit the net output to the transmission grid to a maximum of 79.9 MW.

**A. The Proposed Peaking Station Will Help Address Long Island's Need For Peak Electric Generating Capacity**

Petitioner intends to construct the proposed Peaking Station to help address Long Island's need for additional installed electric generating capacity ("ICAP") due to the continuing growth of peak energy demand. ICAP requirements are generally expressed as a percentage of the expected peak demand, with the minimum ICAP requirement expressed as the percentage of peak demand necessary to ensure energy reliability. Such a requirement may include both a margin above the expected peak as well as a specific locational requirement.

529

The New York Independent System Operator ("ISO") recently calculated the minimum locational ICAP requirement for Long Island for the summer of 2001, and concluded that Long Island required local generating capacity capable of meeting 98% of its expected peak load. Locational Installed Capacity Requirements Study at 2 (N.Y. Ind. Sys. Op., Feb. 15, 2001) ("ICAP Study"). The ICAP Study assumed that Long Island would compensate for any local capacity shortfalls by tapping the statewide capacity of approximately 117% of peak load. Id.

At the time of the ICAP Study, Long Island fell 131 MW short of the 98% requirement. Id. at 5. Since then, the New York Power Authority ("NYPA") has started up a 44 MW combustion turbine and connected it to LIPA's Brentwood Substation. In addition, there have been changes in load and capacity figures sufficient to raise Long Island's locational ICAP almost to the 98% minimum requirements.

However, Long Island will need additional peak capacity by next summer, because Long Island's peak energy needs are expected to increase by approximately 100 MW in each of the next several years. In addition, LIPA recently estimated that a heat wave similar to that in July, 1999, would push Long Island's peak requirements to record levels, as much as 500 MW higher than projections. The growth in energy requirements is a particular concern for Nassau and Suffolk Counties, including the Oyster Bay area, because they have only limited electrical interconnections from utilities in Queens County, Westchester County and Norwalk, Connecticut.<sup>1</sup>

<sup>1</sup> As a recent example, the August 6-10 heat wave created power demands that nearly exceed Long Island's peak capacity. On August 6, LIPA issued an energy conservation appeal to its customers. LIPA declared the following day a Critical Conservation Day, and then set a summer 2001 record for aggregate power delivery to its customers. LIPA delivered 4620 MW during the peak hour ending at 5:00 p.m., only 160 MW less than LIPA's firm supply. LIPA  
Footnote continued on next page

New electric generating capacity is being built to meet Long Island's energy needs, and LIPA is examining several new projects to provide energy for 2002. Nonetheless, as of the date of this petition, there are firm plans for just 44 MW of new local capacity for 2002, compared to 100 MW in expected growth. As a consequence, Long Island has an immediate need for the proposed Peaking Station. In the longer term, the proposed Peaking Station will help ensure that Long Island keeps pace with its growing need for peak energy capacity.

**B. The Proposed Site Already Has The Infrastructure Necessary To Expedite The Construction And Start-Up of the Peaking Station**

Petitioner selected the Glenwood Landing site for the proposed Peaking Station because the site has the infrastructure necessary for Petitioner to construct the station and begin operations in time to help meet Long Island's energy needs during the summer of 2002. The site currently houses a 15 MW oil-fired generator, and thus it already has a back-up fuel oil tank. The site also has convenient access to a natural gas supply line with sufficient capacity to accommodate the Peaking Station. Finally, LIPA's bulk electric transmission system in this area can easily accommodate the additional 79.9 MW with only limited modifications.

The owner and operator of the existing 15 MW generator is KeySpan Generation LLC ("KeySpan Generation"), which is a direct and wholly-owned subsidiary of KeySpan Corporation. Consequently, both Petitioner and Glenwood Energy (to whom

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Footnote continued from previous page  
declared another Critical Conservation Day for August 8, but quickly upgraded it to a Stage I Power Alert. During the peak hour ending at 5:00 p.m., LIPA delivered 4565 MW to its customers, only 80 MW less than LIPA's firm supply. LIPA declared another Stage I Power Alert for August 9, and during the peak hour delivered only 120 MW less than the firm supply. LIPA declared a Stage I Power Alert for August 10 as well. 2001 LIPA News Releases, at <http://www.lipower.org/news99/news99.html>.

531

Petitioner intends to transfer the Peaking Station) are indirect affiliates of KeySpan Generation.

The existing 15 MW generator was installed in the late 1960s, and it is still capable of operation. It is occasionally used as a peaking facility, but its primary role is as an emergency "black-start" generator, to generate electrical power when there are black-out conditions and a complete loss of electrical power to the transmission grid. The existing generator is operated remotely, with no full-time personnel.

C. The Proposed Peaking Station Will Be Physically Separate From The Existing KeySpan Generation 15 MW Generator

The existing 15 MW generator will be physically separate from the proposed Peaking Station. Accordingly, the Peaking Station will not incorporate or use any of the existing generator's facilities, with the exception of its fuel oil storage tank, waste water outfall and filling station. The Peaking Station will use these three facilities in order to avoid duplication and expedite construction and start-up.

Petitioner will purchase the parcel containing the Peaking Station site from its present owner, KeySpan Energy Delivery Long Island, and also purchase the existing analytical laboratory building for use by the Peaking Station operators. Petitioner will then transfer the Peaking Station to Glenwood Energy, lease to Glenwood Energy the real property for the Peaking Station, and grant easements to other KeySpan entities and to LIPA as appropriate to allow the continued operation of the existing 15 MW generator and other site facilities.

Petitioner will install the proposed LM6000 generators and associated structures separate and apart from the existing 15 MW generator, and it will construct separate control systems and exhaust stacks. The proposed LM6000 generators will be gas-fired

532

with dual-fuel capability, whereas the existing generator is only oil-fired. The Peaking Station will have a separate natural gas connection. It also will have a separate interconnection to LIPA's bulk transmission system and separate step-up transformer and metering, pursuant to a Federal Energy Regulatory Commission ("FERC") approved interconnection agreement. Petitioner will negotiate a separate contract with LIPA to fuel the Peaking Station, and Glenwood Energy will contract and pay for all other utilities, waste disposal and services.

Glenwood Energy will also be a separate entity with respect to financial, regulatory and market matters. Glenwood Energy will have a separate air operating permit and DEC identification number, and it will apply for separate and independent ISO qualification. Glenwood Energy will apply to FERC for separate and independent approval of market-based rates for energy, capacity and ancillary services, and for exempt wholesale generator status. As stated previously, Glenwood Energy will sell 100% of the Peaking Station energy, capacity and ancillary services to LIPA, which will control its distribution.

To expedite the construction and start-up of the proposed Peaking Station, the Peaking Station will use the existing site access roads and connect to the existing back-up fuel tank. As necessary, the Peaking Station will obtain gas, water and electric from the local utilities. The Peaking Station will discharge waste water through the existing outfall pursuant to a modification of the current State Pollutant Discharge Elimination System ("SPDES") permit, and use the existing sewer system. KeySpan Generation, Glenwood Energy and LIPA will be responsible for their proportionate share of the SPDES permit fees pursuant to existing and future agreements.



533

Glenwood Energy will operate the proposed Peaking Station pursuant to an operating agreement with its indirect affiliate KeySpan Engineering and Survey, Inc., a direct subsidiary of KeySpan Corporation. KeySpan Engineering and Survey, Inc. provides engineering, surveying, maintenance and operating services to the combustion turbines operated by the KeySpan family of companies.

In sum, the proposed Peaking Station will have a separate corporate identity, separate regulatory status, and separate facilities from the existing 15 MW generator. To the extent the proposed Peaking Station shares services and equipment with the existing generator, the Peaking Station will act separately and in its own name.

**D. The Proposed Peaking Station Will Also Be Physically Separate From The Glenwood Power Station**

A second KeySpan Generation facility, the 310 MW Glenwood Power Station, is located on a separate, non-contiguous parcel approximately one-quarter mile south of the proposed Peaking Station and on the other side of Shore Road. The Peaking Station will share no structures, access roads, permits, fuel tanks, parking areas, outfalls, equipment or sanitary waste water treatment with the Glenwood Power Station. It will have shared support, maintenance and operating personnel only in that it will use the operating contractor, KeySpan Engineering and Survey, Inc., that services the gas turbines at the Glenwood Power Station. The Glenwood Power Station, the Peaking Station and the existing 15 MW generator will also connect to the same LIPA substation (through separate step-up transformers), because LIPA intends to use the existing substation for all three facilities in order to avoid duplication and reduce expenses and costs to its customers.

## II. REQUESTED RULING

Petitioner requests, pursuant to section 161 of the Public Service Law and part 8 of N.Y. Codes R. & Regs., tit. 16, a declaratory ruling that the construction of the proposed Peaking Station, comprising two General Electric LM6000 simple-cycle natural gas combustion turbines, will not be "the construction of a major electric generating facility" within the meaning of section 162(1) of the New York Public Service Law.

## III. APPLICABLE LAW

A person constructing an electrical generating station with a capacity less than 80 MW need not obtain a certificate under article X of the Public Service Law ("Article X") from the New York Board on Electric Generation Siting and the Environment ("Board"). Petition of NRG Energy, Inc., case 01-F-0222 at 6 (N.Y. Bd. Elec. Gener. Sit. & Env't, June 20, 2001) ("NRG"); In re Uprose v. Power Authority, Nos. 2001-03661, 2001-03677, 2001 WL 830817, at \*2 (App. Div. June 29, 2001) (affirming the part of the Supreme Court decision upholding the declaratory ruling of the Board on Electric Generation Siting and the Environment).

Although the original purpose of the 80 MW capacity limit is unclear, the Board has previously observed that the capacity limit ensures that a project receives the level of environmental review "appropriate to the size and scope of the project." NRG at 9; see also Uprose v. N.Y. Power Authority, No. 4705/01, slip op. at 11, 17 (Sup. Ct. Apr. 6, 2001), aff'd, 2001 WL 830817 (2001). The appropriate level of environmental review for an electrical generating station depends on the station's actual operational capacity, not its theoretical "name-plate" capacity.

Consequently, it is now well-established that a person who makes a legally binding commitment to construct an electric generating facility with a net output of less than 80 MW is not subject to the Board's jurisdiction over major electrical generating facilities. NRG at 9-10; Uprose, 2001 WL 830817, at \*2. This holding is consistent with Public Service Commission rulings under the statutory predecessor of Article X. See East Syracuse Generating Co., cases 91-E-0923, 91-E-0454 at 11-12 (N.Y. Pub. Serv. Comm'n, Oct. 2, 1991) ("East Syracuse"); Central Hudson Gas & Electric Corp., Consolidated Edison Co. of New York, Long Island Lighting Co., case 28689 at 2 (N.Y. Pub. Serv. Comm'n, Feb. 1, 1989); Salt City Energy Venture, cases 28689, 29479, 29387, 1988 NY PUC LEXIS 58 at \*13 (N.Y. Pub. Serv. Comm'n, May 27, 1988).

Article X contains a second capacity limit that applies only to alterations of existing major electric generating facilities. This capacity limit expressly exempts from Board jurisdiction all "normal repairs, replacements, modifications and improvements of a major electric generating facility . . . which do not constitute a violation of any certificate issued under this article and which do not result in an increase in capacity of the facility of more than fifty thousand kilowatts." Art. X, § 162(4)(c).

The Board examined both of these capacity limits in its most recent Article X decision, NRG. NRG had petitioned for a declaratory ruling that its proposed peaking station would not be a "major electric generating facility" within the meaning of Article X as long as the proposed facility agreed to a binding 79.9 MW operational limit. The owner of the peaking station was to be a new, wholly-owned subsidiary of NRG. NRG proposed to construct the new peaking station at an electric generating complex with an

536

existing capacity of 759 MW, on property leased from an indirect affiliate of the peaking station owner. NRG at 2.

NRG had designed its peaking station to be physically separate from the existing electric generating complex, with a separate structure, exhaust stacks, control system and gas metering system. Given the location of the peaking station, however, the station would also share certain services and facilities with its lessor (its indirect affiliate) and the other companies at the complex. For example, the peaking station would share a remote monitoring system, gas interconnection, and back-up fuel tank with its lessor. The peaking station would be operated pursuant to an operating agreement that potentially might use staff working at the complex. Furthermore, the peaking station would share roadways, entrances, security guards, loading docks, water and waste systems, and natural gas headers with the other companies at the complex, and be party to all applicable easement agreements for the operation and maintenance of equipment and transmission systems.

The Board reviewed these arrangements and agreed with NRG that the proposed peaking station would not be a "major electric generating facility" within the meaning of Article X. It also found that the proposed station was not a repair, replacement, modification or improvement of the existing electric generating complex, see Art. X, § 162(4)(c):

The proposed unit is not a repair or modification because it is a new unit unrelated to a condition in the existing facility in need of repair or being modified in any way. Moreover, NRG does not propose to replace any part of the existing major electric generating facility. The new unit does not constitute the improvement of the existing facility, because the proposed facility is essentially separate from the existing facility. . . . [T]he proposed unit is distinct from the existing facility, except that there

539

are a few common features – namely, the remote monitoring system, the gas interconnection, a fuel tank, and some roads and water systems.

NRG at 8. Importantly, the Board found that the proposed facility was not “the segmentation of a larger project for the purpose of avoiding or minimizing review.”<sup>2</sup> NRG at 9.

The NRG decision is consistent with the Board’s decision in East Syracuse under Article X’s predecessor, Article VIII. East Syracuse had accepted an 80 MW limit on the capacity of an electric generating facility subject to the condition that it could expand this generating capacity as long as the new capacity was “separately-metered and contracted for.” East Syracuse at 4. The Public Service Commission had held that this condition applied to new capacity that was “governed by a second contract [and] physically separate from the generation plant governed by an original contract.” Id. at 12. In other words, the power production components were independent facilities for purposes of the 80 MW capacity limit as long as the “power production components [] were physically

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2

The Board’s findings were as follows:

1. If a new affiliate of NRG Energy, Inc. [NRG] makes a legally binding commitment in the required air emissions permit and certificate of public convenience and necessity that the generating unit will not be operated at a total net generating capacity of 80 MW or more (including a commitment to install all practicable measures for recording compliance with such output limitation and reporting of monitoring data to the New York State Department of Public Service at regular intervals), the generating facility so constructed will not be a major electric generating facility under Article X of the Public Service Law.
2. If an indirect affiliate of Astoria Gas Turbine Power, LLC [the real property owner] proposed to construct a generating unit with a capacity of less than 80 MW, as described in the petition filed in this proceeding, the generating unit so constructed and so operated will neither be, nor form part of, a major electric generating facility subject to the Board’s jurisdiction under Article X of the Public Service Law.

NRG at 9-10.

538

separated from the power production components governed by the original contract." Id. at 9.

In summary, the Board now has a lengthy and consistent record of decisions, recently upheld by the Appellate Division of the Supreme Court, establishing that a physically separate power generating facility with a binding output limit of less than 80 MW is not major electric generating facility within the meaning of Article X.

#### IV. DISCUSSION

The present petition is similar to those reviewed in NRG and Uprose. Like the facility owners there, Petitioner is not repairing or modifying an existing major electric generating facility, but rather proposing to build a new facility with a name-plate capacity of about 94 MW and a binding output limitation of 79.9 MW.

The proposed Peaking Station cannot be a repair, replacement, modification or improvement of an existing major electric generating facility within the meaning of section 162(4)(c) of Article X, because the adjacent 15 MW generator is not a major electric generating facility. A major electric generating facility is "an electric generating facility with a generating capacity of eighty thousand kilowatts or more," and the existing generator has a capacity of only 15 MW.

In addition, the proposed Peaking Station cannot be a repair, replacement, modification or improvement because it will be a new generating facility that is physically and legally separate from the existing generating facilities. For purposes of Article X, both Petitioner and the ultimate Peaking Station owner, Glenwood Energy, will be separate entities from KeySpan Generation (the owner of the existing 15 MW generator and the Glenwood Power Station), because they are only indirect affiliates of

539

KeySpan Generation. The Board has held that an indirect affiliate may be a separate entity for purposes of the 80 MW limit in Article X. NRG at 9-10.

The Peaking Station will be physically separate from the existing 15 MW generator because it will have separate generation equipment and structures, control systems, exhaust stacks, step up transformers, electric output meters, and water and gas meters. Petitioner, Glenwood Energy's parent, will contract for fuel for the Peaking Station, and Glenwood Energy will contract in its own name for all other utilities, waste disposal and services. In addition, Glenwood Energy will obtain its own air operating permit and otherwise act as an independent entity in regulatory and market matters. As in NRG, Glenwood Energy will share only a limited amount of equipment and facilities at the site by way of easements and contractual rights, such as the existing access roads, back-up fuel tank, and certain waste water systems including a permitted outfall.

Similarly, the proposed Peaking Station will be physically and legally separate from the Glenwood Power Station. The Glenwood Power Station is on a separate, non-contiguous parcel one-quarter mile from the proposed site, so it and the Peaking Station will share none of their facilities, services or equipment. The only "shared" attribute will be LIPA's transmission system, to which these generating facilities (and all other generating facilities, for that matter) will interconnect, and contract personnel who may, from time to time, work at both of the generating facilities pursuant to separate and independent operating agreements with KeySpan Engineering and Survey, Inc.

Finally, the new Peaking Station does not segment a larger project and thereby avoid appropriate environmental impact review under Article X or the State Environmental Quality Review Act. The existing 15 MW generator was installed more

540

than thirty years ago, and the 310 MW Glenwood Power Station was constructed more than 40 years ago. These facilities are and will remain distinct from the proposed Peaking Station for purposes of SEQRA and Article X, and Petitioner will ensure appropriate environmental impact review of the Peaking Station by complying with all applicable SEQRA requirements.

Petitioner respectfully submits that the Board should declare that Petitioner's construction of the Peaking Station described herein is not subject to the Board's jurisdiction over major electric generating facilities pursuant to Article X. To satisfy Article X's requirement that the Peaking Station have capacity less than 80 MW, Petitioner will make "a legally binding commitment in the required air emissions permit and certificate of public convenience and necessity that the generating unit will not be operated at a total net generating capacity of 80 MW or more (including a commitment to install all practicable measures for recording compliance with such output limitation and reporting of monitoring data to the New York State Department of Public Service at regular intervals." NRG at 9-10.



541

## V. CONCLUSIONS

For the foregoing reasons, Petitioner respectfully requests that the Board grant this petition for a declaratory ruling that the proposed Peaking Station will not be a major electric generating facility under Article X.

Respectfully submitted,

Michael B. Gerrard /NDJ/

Michael B. Gerrard, Esq.

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Facsimile (212) 715-1399  
Attorneys for Petitioner KeySpan Energy  
Development Corp.

Date: August 15, 2001

542

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of August, 2001, I caused a true and correct copy of the annexed Glenwood Landing Energy Center: Petition of KeySpan Development Corporation for a Declaratory Ruling to be served by overnight mail upon the following:

Mr. Richard Arnold  
Glen Head Glenwood Business  
Association  
329 Glen Cove Avenue  
Sea Cliff, NY 11579

Mr. Dennis Buckley  
North Shore Environmental Alliance  
One Robert Lane  
Glen Head, NY 11545

Ray Cowen, P.E.  
New York State Department of  
Environmental Conservation  
SUNY Stony Brook  
Loop Road  
Building 40, Room 121  
Stony Brook, NY 11790-2356

Ms. Marie Coyle  
Glen Cove Chamber of Commerce  
c/o The Regency  
94 School Street  
Glen Cove, New York 11542

Erin M. Crotty, Commissioner  
New York State Department of  
Environmental Conservation  
625 Broadway  
Albany, NY 12233

Mr. Al D'Agostino  
Nassau County Planning Commission  
400 County Seat Drive  
Mineola, NY 11501

Ms. Ann DiPietro  
Sea Cliff Civic Association  
c/o Village Hall, Sea Cliff Avenue  
Sea Cliff, NY 11579

Gregory J. Giammalvo, Esq.  
Town Attorney  
54 Audrey Lane  
Oyster Bay, NY 11771

Stanley B. Klimberg, Esq.,  
General Counsel  
Long Island Power Authority  
333 Earle Ovington Blvd., Suite 403  
Uniondale, NY 11553

Ms. Sarah Meyland  
Citizens Campaign for the Environment  
225A Main Street - Suite 2  
Farmingdale, NY 11735

The Honorable Claudia Moyne  
Mayor, Incorporated Village of Sea Cliff  
Village Hall, Sea Cliff Avenue  
Sea Cliff, NY 11579

Mr. Brian Muellers  
Nassau County Legislator, District 18  
1 West Street  
Mineola, NY 11501

Nassau County Department of Health  
240 Old Country Road  
Mineola, NY 11747

543

Natural Resources Defense Council  
40 West 20th Street  
New York, NY 10011

New York Lawyers for Public Interest  
151 West 30<sup>th</sup> Street – 11<sup>th</sup> Floor  
New York, NY 10001-4007

New York Public Interest Research  
Group  
9 Murray Street  
New York, NY 10007

The Honorable May Newburger  
Supervisor, Town of North Hempstead  
220 Plandome Road  
Manhasset, NY 11030

Ms. Martha S. Offerman  
Town Clerk, Town of Oyster Bay  
54 Audrey Lane  
Oyster Bay, NY 11771

Ms. Lynn Oliva  
Hempstead Harbor Protection  
Committee  
220 Plandome Road  
Manhasset, NY 11030

Planning Board  
Town of Oyster Bay  
54 Audrey Lane  
Oyster Bay, NY 11771

Planning & Development Dept.  
Town of Oyster Bay  
54 Audrey Lane  
Oyster Bay, NY 11771

Zoning Board of Appeals  
Town of Oyster Bay  
54 Audrey Lane  
Oyster Bay, NY 11771

Dr. Robert Root  
North Shore School District  
112 Franklin Avenue  
Sea Cliff, NY 11579

Mr. Kent P. Sanders  
Environmental Analyst  
Division of Environmental Permits  
New York State Department of  
Environmental Conservation  
625 Broadway – 4<sup>th</sup> Floor  
Albany, NY 12233-1750

Ms. Lynda Schroeder  
Coalition to Save Hempstead Harbor  
247 Sea Cliff Avenue  
Sea Cliff, NY 11579

The Honorable John Venditto  
Supervisor, Town of Oyster Bay  
54 Audrey Lane  
Oyster Bay, NY 11771

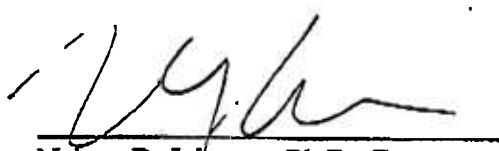
I hereby certify that on the 15th day of August, 2001, I also caused a true and correct copy of the annexed Glenwood Landing Energy Center: Petition of KeySpan Development Corporation for a Declaratory Ruling to be served by certified mail upon the following:

344

Ms. Cecile McCann  
Glenwood/Glen Head Civic Association  
P.O. Box 476  
Glenwood Landing, NY 11547

Mr. Herman A. Stuhl  
New York Institute of Legal Research  
P. O. Box 398  
Yorktown Heights, NY 10598-0398

Dated: August 15, 2001



Nelson D. Johnson, Ph.D., Esq.  
Arnold & Porter  
399 Park Avenue  
New York, New York 10022-4690  
Tel: (212) 715-1038  
Fax: (212) 715-1399

510

**DAVID J. KETTLER, PE**  
***Site Engineering/Design***

**David J Kettler Associates, Inc.**

STATE OF NEW YORK	
DEPT. OF PUBLIC SERVICE	
DATE	12/18/87
CASE NO.	91E1634-1
EX	112

**EDUCATION**

Bachelor of Mechanical Engineering, Pratt Institute (1972)  
Graduate Studies in Business Administration, Pace University (1973 - 1976)

**PROFESSIONAL EXPERIENCE**

**David J Kettler Associates, Inc. 1997 to Present**  
**Wantagh, New York**  
**President**

President of Consulting Engineering firm serving the Power and Solid Waste Industries. Areas of expertise include Combustion and Steam Turbine Generators, Conventional, Fluid Bed and Heat Recovery Boilers, Air Quality Control Systems, Thermal Cycle Design, Plant Conceptual Design, Construction Management, Feasibility Studies, EPC Specification Development, Due Diligence Reviews and Expert Testimony.

Typical projects include; engineering and licensing support for simple cycle LM6000 projects with SCR systems located in California, New York and Pennsylvania, studied repowering of existing LM2500 gas turbine, conceptual design for a 100 MW combustion turbine plant, thermal cycle design and environmental licensing support for a 500 MW combined cycle power plant in California, owners engineering for a 400 MW combined cycle plant in Texas, review of a Utilities Existing Generation Sites for Future Generation Expansion, Market Pricing Survey of Fluid Bed and Coal Fired EPC Plants, and a Global Market Survey - Gas Turbine Project Market Trends and Projects.

Also managed the conceptual design and NYS-DEC Part 360 Engineering Report for a MSW to Ethanol Feedstock Preparation System, the conceptual design of a WTE Facility MSW to RDF preparation system. Performed a due diligence review of an existing 700 mw cogeneration plant utilizing Siemens Technology. Reviewed the Siemens V84.2 Technology following a major combustion turbine failure. Provided expert testimony before the National Labor Relations Board relating to the functions of owners, engineers, constructors and methods of contracting for cogeneration and combined cycle power plants. Performed a due diligence of a simple cycle power project design, cost estimate and construction schedule. Performed a design review of a combined cycle power facility that experienced an explosion.

**RRT Design & Construction Corp. 1995 - 1997**  
**New York, NY**  
**Director of Projects**

Overall responsibility for the performance of the project management department. Provide oversight to project managers for all design-build contractors. Projects completed include a \$10 million paper

511

recycling plant in Philadelphia, Pa, two \$2 million commingled/paper cycling plant in Washington, DC, an MSW to Compost Feedstock Preparation Plant in Sumter County Fl, a recycling building expansion project in Palm Beach, Fl, and a new \$ 6 million Transfer Station in North Hempstead, NY.

**Stone & Webster Engineering Corp.      1988 - 1995**  
**New York, NY**  
**Manager of Projects**

Managed projects with on time and under budget performance to client satisfaction. Provided direction to seven project managers for various power, industrial and transportation projects valued at over \$ 400 Million. Responsible for office Industrial and Power Business sector strategic plan development and implementation.

***Selected Accomplishments:***

- Project Manager for replacement of a 60,000-lb/hr boiler with a 125,000-lb/hr boiler and various modifications to the Central Steam Facility to improve the energy efficiency of the facility. Responsibilities included engineering, design, licensing support, procurement assistance, and construction observation.
- Project Manager for a major rehabilitation and design modification project with a fast track schedule to successful completion. Restored simple cycle power operation in a condensed five months, two months ahead of schedule. Combined cycle operation was restored in six months three months ahead of the original nine month schedule.
- Project Manager for two 50 Mw Cogeneration plant lump sum engineering, design, procurement support, and startup contracts to their successful on time completion. Schedules required fast track permitting for river transmission crossing and once thru cooling system design with U.S. Corps of Engineers and N.Y. State Department of Environmental Conservation.

**EBASCO Services Incorporated      1972 - 1988**  
**New York, NY**  
**Project Manager/Consulting Engineer (1982 - 1988)**

Responsible for various projects related to both new and existing generation facilities.

***Selected Accomplishments:***

- Project Manager for the Wm. H. Zimmer Generating Station Coal/Gas Conversion detailed technical and cost assessment. The project required detailed thermal cycle analysis, including development of hybrid heat balance model. Detailed capital cost estimates +/- 10% prepared based on conceptual designs.

**Project Engineer (1976 - 1982)**

Project engineer, responsible for management of multi-discipline engineering and design resources for power projects.

***Selected Accomplishments:***

- Completed the fast track relicensing, engineering and construction support of the first coal plant constructed under N Y State's Article VIII requirements.

**Engineer (1972 -1976)**

Responsibilities included engineering system optimization studies, detailed engineering, preparation of equipment specifications and bid evaluations.

**LICENSES*****Licensed Professional Engineer - State of New York***

Twenty-nine years of extensive diverse project management of complex multi-disciplined projects for the power and solid waste industries. Specific project execution experience includes resource allocation planning, scheduling, contract management, cost control, procurement, construction and startup with overall profit responsibility. Additional skills include project development, proposal preparation, presentation skills, pricing strategy, and public testimony in support of projects.

**PROFESSIONAL AFFILIATIONS**

American Society of Mechanical Engineers - Past Regional Vice President.

**TECHNICAL PUBLICATIONS**

Author of twenty technical papers dealing with various technical and economic issues associated with industrial and utility power projects.