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Testimony

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January 25, 2007

Jaclyn A. Brilling, Secretary
Public Service Commission
Three Empre State Plaza
Albany NY 12223-1350

Re: Case 06-M-0878, and related rate cases

Dear Secretary Brilling:

Intervenors are required to pre-file their direct testimony in the above case, by January 29, 2007.

I enclose herein Part I of the pre-filed testimony of Intervenor Robert V. Nicholson, which describes documentary evidence, which is relevant and material to the Commission's review of Intervenor's interlocutory appeal from the ruling of ALJs Lynch and Phillips, excluding the LILCO December 27, 1993 Strategy Report, from admissibility in evidence.

I respectfully request the Commission to review the December 27, 1993 document, together with the other documentary evidence, including the PSC's own records of LILCO filings, and to determine whether the document is covered by the claimed privilege. I have already presented to the Commission legal arguments why the privilege does not apply.

The tendered documentary evidence will aid the Commission in determining whether the fraud exception to attorney/client privilege is also applicable here.

The December 27, 1993 document lays out LILCO's strategy of performing no MGP remediation, unless forced to, or unless assured by the PSC of full recovery from the rate payers, a course of action which intentionally violatd the Superfund laws. In fact, LILCO performed no remediation. LILCO's strategy and conduct contradicted LILCO's representations to the PSC and other regulatory agencies, which it made continuously for several years thereafter, in order to gain PSC recognition of it right to rate recovery, that its corporate policy was to be pro-active in MGP remediation.

LILCO also misrepresented to the PSC, the number of MGP sites it owned. In 1993, it represented that it owned 6 MGP sites. In fact, LILCO owned 15 sites, and failed to

pursue claims for contribution against potentially responsible parties, and to seek recovery insurance policy proceeds for SIR MGP costs, as required under the PSC's prudency rules.

I submit this documentary evidence now, so that if the Commission intends to rule on the Interlocutory Appeal before January 29, it will have the benefit of understanding the relevance and materiality of the December 27, 1993 LILCO strategy document to the testimony

I have not completed the preparation of Mr. Nicholson's direct testimony and assembly of supporting exhibits, because I am awaiting responses to outstanding discovery, and review of extensive documentation provided on CD Roms. Following such review, I will file Part II of his testimony, and intend to do so by the deadline of January 29, 2007, established by ALJ Lynch.

Please transmit copies of the enclosures to the Commission.

Respectfully yours,

REILLY, LIKE & TENETY

By:_____
IRVING LIKE

cc: Active Parties List

JANUARY 24, 2007

TESTIMONY OF INTERVENOR ROBERT V. NICHOLSON - PART I

Q. Please state your name and address
Robert V. Nicholson, 2449H Union Blvd., Suite 28B, Islip, New York

Q. Please describe your occupation.
A. I am a licensed consulting engineer.

Q. Have you filed a Notice of Appearance, as an Intervenor, in behalf of a class of persons similarly situated.
A. Yes.

Q. What is the purpose of your intervention and testimony in this proceeding?

A. My purpose is to contribute to the development of a factual and legal record in this proceeding in order to aid the Public Service Commission to arrive at a just and reasonable decision of the issues before it, to initiate future proceedings using the evidentiary record in these proceedings, to develop a generic policy for the treatment of MGP site investigation and remediation ("SIR') costs in rate cases.

Q. Have you prepared exhibits in support of and to accompany your testimony
A. Yes, they are contained in an Appendix of Exhibits. ('Appendix")

Q. Have you prepared a resume describing your qualifications
A. Yes, it is Exhibit of the Appendix.

Q. Please summarize your qualifications, and their relevance to this proceeding

A. As a consulting engineer, and qualified environmental professional, I undertook to evaluate the adequacy of KeySpan's remediation of the contaminants of the MGP site and of the off-site properties lying over or in close proximity to the site including my former contaminated property at 22 Oak Street, Bay Shore, New York

I educated myself in the history of MGP coal tar plant operations, read the reports of KeySpan's consultants, reviewed US Government data regarding MGP site contaminants, the data gathered from KeySpan's reports to the DEC, and its communications with the public. I also communicated with KeySpan representatives, and with the DEC, met with representatives of the Suffolk County Department of Health Services, reviewed their reports, visited some of the contaminated sites, and discussed them with their owners, and analyzed KeySpan's filings with the SEC, and PSC.

Based on my qualifications, experience, and study of KeySpan's remediation effort, and its responses to discovery in this proceeding, I reached the findings, conclusions and opinion set forth in this testimony.

Q. Have you stated your legal and factual contentions in this proceeding, which support your testimony.

A. Yes, legal and factual contentions are partially stated in the Notice of Appearance, dated August 7, 2006, which I filed in this proceeding.

Q. What are they.

LEGAL CONTENTIONS

A. CERCLA provides in 42 USC 9607 (e)

Indemnification, hold harmless, etc., agreements or conveyances; subrogation rights

(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or threat of release under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this subchapter, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

Accordingly, I have requested:

A. A declaratory ruling that CERCLA bars the Joint Petitioners from any recovery of the remediation costs from the Rate Payer Class Petitioners; and that

B. If the PSC determines that CERCLA does not bar recovery, PSC shall conduct a prudency investigation on the remediation issues, to determine whether KeySpan was and is entitled to charge to the Ratepayers Class Petitioners, the past and future remediation costs related to the former MGP site in Bay Shore, and that

C. Pending such determination and completion of the prudency investigation, the PSC shall deny any application by the Joint Petitioners, in this, or any pending or future proceeding to recover such costs from the Ratepayer Class Petitioners.

I am also requesting that the evidence in the record of these proceedings be admitted to support determinations by the PSC that:

a. Assuming recovery is not prohibited by CERCLA, KeySpan/National Grid are not entitled to recover any MGP site investigation or remediation ("SIR")

costs in the merger proceeding and its related rate cases, not prudently incurred, unless and until remediation of the Bay Shore MGP site, including but not limited to off- site properties, surface waters, and other natural resources, is expedited and satisfactorily completed, by a prescribed deadline, and appropriate compensation is paid for liabilities to property owners for damages, to persons exposed to the contaminants who suffer toxic tort injury, and for damage to natural resources.

b. KeySpan/National Grid are not entitled to recover any MGP SIR costs for off-site contamination, or for any expenses incurred for remediation of contamination that has migrated from the site.

c. Based on the record in these proceedings, the PSC should initiate and serve notice of proceedings directed to all utilities which own former MGP sites, in order to formulate a generic policy for the treatment of applications in rate cases, for recovery of MGP "SIR" Costs, and that said proceedings also include consideration of the costs associated with liabilities for third party property damages, third party potential toxic tort injuries, and other potential adverse health impacts, and natural resource damages caused by exposure to MGP site contaminants.

Q. Do you have any additional legal contentions not stated in your Notice of Appearance

A. Yes.

a. The negative SEQRA Declaration ruling is defective in that there was no evaluation of the adverse health, environmental & economic aspects of the site investigation and remediation ("SIR") of the former MGP sites, the multi-million dollar costs of which, KeySpan and National Grid seek to recover from the rate payers.

I request that the PSC direct that Keyspan and National Grid, prepare file, and circulate as required by SEQRA a full Environmental Impact statement covering the MGP sites, as a condition precedent to consideration of their request to recover MGP SIR costs from the rate payers.

b. The KeySpan MGP sites are discharging contaminants into the navigable waters of the State of New York, to wit Lawrence Creek, Watchogue Creek, Patchogue River, Sag Harbor, and Glen Cove, in violation of federal, state and local laws.

c. LILCO and its successor in interest KeySpan have made misrepresentations to the PSC and other regulatory agencies, and have acted imprudently in the management of their MGP sites, have not taken prudent steps to to obtain cost recovery from all available funding sources, including other responsible parties and insurance carriers, in violation of the standards established by the PSC in rate cases, (see for example Cases 93-G-0621, 1995 N.Y. PUC LEXIS 49 Feb. 16, 1995, and Case 93-G-0941, Brooklyn Union Gas Company, Opinion and

Order Approving Settlement with Modifications, Opinion No. 94-22 (issued October 18, 1994), and kunder the decisional precedents of the Shoreham Prudency cases, and are not entitled to recover from the rate payers the unreasonable costs of investigation and remediation of the MGP sites.

d. KeySpan is liable for damages, and equitable relief, for its tortious conduct, as alleged in the First Amended Complaint, and plaintiffs' supporting papers, in the class action against KeySpan defendants, filed by Intervenor Nicholson, et al in the Supreme Court, Suffolk County, bearing index number 17458/06.

Q. What is the basis of your legal contention that CERCLA bars recovery of the MGP SIR costs from the rate payers.

A. Under CERCLA, KeySpan is strictly liable for the costs and remediation of both on-site and off-site and surrounding soil, surface water and groundwater contamination of the subject properties, caused by it, and/or by its predecessor LILCO, and for property damages, toxic tort injuries, and natural resource damages caused by exposure to the MGP site contaminants.

LILCO assigned it liabilities to KeySpan, which assumed such liabilities.

As a matter of law, a responsible party cannot shift primary cleanup responsibilities to a third party by means of indemnification agreements under CERCLA, unless the third party assents thereto.

The rate payers have not consented to the transfer of such liabilities, or to the recovery of said costs in their rates, and KeySpan may not recover said costs from the rate payers.

FACTUAL CONTENTIONS

Q. Are you relying on any documentary evidence to support your testimony, and if so, please describe what documents

A. Yes. The documents I rely on are referred to in the papers and exhibits submitted in opposition to KeySpan's motion to dismiss, in the class action I filed in the Supreme Court, Suffolk County, bearing index no. 17458/06, which are on line in the web site I created known as www.bayshoremgp.com . I ask that they be deemed fully incorporated herein by reference.

I also rely on KeySpan/National Grid's responses to my discovery requests in these proceedings.

Q. What is your understanding of the nature of MGP operation, and how the Bay Shore community has been affected by the former MGP site which was managed by LILCO

A. The former Manufactured Gas Plant (MGP) site is located in the heart of Bay Shore in a heavily populated residential part of town. The history of Bay Shore MGP operations date back to the late 1800s and demolition of above ground gas plant equipment was completed in 1976. The MGP was historically operated by LILCO and used to convert coal (and later petroleum oils) into a synthetic gas that was piped and sold to LILCO's residential and commercial customers. Vast quantities of coal and oil, known as '*feed stocks*', were consumed in the gas manufacturing process. The process, however, also produced significant amounts of waste byproducts including an amalgam of hazardous chemicals collectively known as '*coal tar*'. The MGP waste products were either sold-off or disposed-of at the MGP site. The gas plant also used vast quantities of water in the manufacture process. Water was pumped out of the ground, stored, used in the process, and then discharged at the site or into the nearby *Watchogue Creek*. In summary, the site was operational for over 80 years and has been idle for 30 years.

These contaminants have put at continuing risk of toxic tort injury, the health of persons exposed thereto, particularly children, caused property damage, and damages to natural resources, and community infra- structure, and unjustly increased the rates paid by the utility's customers.

Q. How is KeySpan responsible for the LILCO MGP sites.

A. KeySpan Corporation acquired LILCO's gas plants, and accepted the liability associated with this contamination and agreed to a continued investigation and clean up under an 'Order on Consent' with the NYSDEC, signed in September 1999.

The MGP site is currently contaminated with the petroleum feed stock and the coal tar hazardous chemicals that were left in the ground by LILCO. Collectively, these hazardous chemicals are referred to as '*source material*'. Source material is located at the KeySpan site and on privately owned or government properties. The source material continually leaches hazardous chemicals in the groundwater resulting in large toxic contamination '*plumes*' that extend southward from the hazardous sources towards *Lawrence Creek* and the *Great South Bay* estuary. These contamination plumes extend beneath homes, businesses, parks and public access facilities. There is a history of complaints about MGP nuisance dating back to the 1950s. Environmental study of the MGP began in earnest in the late 1970s and continues through the present.

Q. What is the present status of the environmental study.

A. KeySpan Corporation is withholding information essential to the understanding of an environmental threat within the Bay Shore community. Three decades of environmental study, investigation and comprehensive laboratory analyses are not totally within the public domain and have not been made available to governmental regulating bodies entrusted with the public welfare.

As of today, a small fraction of physical remediation has been accomplished. KeySpan has admitted that the contamination is continuing, is causing property

damage, and will continue until the source material of contamination is removed, and it is unable to project any date by which remediation will be complete.

KeySpan has admitted it is unable to quantify the amount of contaminants that have been removed, or yet to be removed.

Q. What is the documentary evidence supporting your testimony.

A. The documentary evidence is described in:

a. the First Amended Complaint and plaintiff's affirmations and Memoranda filed in the Class Action,

b. the responses of KeySpan and National Grid to Intervenor's discovery requests in this proceeding.

c. the documents, site maps, and images placed on line in the web site www.bayshoremgp.com downloadable via links, among which are documents relevant to the history of coal tar MGP operations, the history of the management of their MGP sites by LILCO and KeySpan, the insurance company litigation filed by LILCO and KeySpan against Allianz Underwriters et al, in the Supreme Court, New York County, bearing Index No. 97/60417,("Insurance Company Litigations") and LILCO and KeySpan filings with the PSC, SEC, NYS DEC, NYS DOH, USEPA, SCDHS.

d. Documents sealed against public disclosure in the insurance company litigation, which KeySpan has refused to identify and produce, except that the LILCO December 27, 1993 strategy report, was admitted into the public record of the Public Statement Meeting held by ALJ Lynch, during the evening of January 10, 2007, in Hauppauge, New York. This document is in the possession of the media, and an unknown number of persons, is accessible from the web site www.bayshoremgp.com. A copy is included, as Exhibit , of the Appendix.

Q. Are there any documents as to which you ask the ALJ to take official notice.

A. Yes. I ask that official notice be taken of the record in the Allianz Litigation, including any documents sealed therein, and the coal tar investigations and rulings of the PSC in various rate cases filed by LILCO and KeySpan, and other utilities, requesting recovery of MGP SIR costs, the citations to which are set forth in Exhibit of the Appendix.

TESTIMONY

Q. Please present your testimony.

A. I testify that:

a. the Bay Shore MGP site has been severely polluted for decades since its operation by LILCO, that cancer causing contaminants released from said site into the ground water, soil and air, have spread through exposure pathways, for over a mile in plumes under dozens of homes, businesses, and places of public assembly which have reached Lawrence and Watchogue Creeks, which flow into Great South Bay, thereby placing at risk of toxic tort injury, the health of persons, in particular children, exposed to the contaminants, causing damage to their properties, and to the infra-structure of the local communities, and to natural resources.

b. the contamination is continuing, is causing property damage, and will continue to do so, and to imperil the health of exposed persons, until the source material of contamination are removed, and that as of this date, KeySpan is unable to predict when the remediation of the Bay Shore MGP site will be completed.

c. the past and future SIR costs incurred, and to be incurred, to clean up the sites owned or controlled by KeySpan and its predecessor Long Island Lighting Company, are unreasonable, and were imprudently incurred, for the following reasons, among other.

1. Due to LILCO's and KeySpan's resistance and delay in remediation, the reported SIR costs incurred have risen, from about $6.1 million dollars as of December 1993, to over $208 million, as to the Bay Shore MGP site, as of December 31, 2003, and according to KeySpan, may be increasing as time goes by

2. The reported SIR costs have risen to a total of over $600 million as to the seven (7) sites owned or controlled by KeySpan, and according to KeySpan, may be increasing as time goes by

3.. SIR costs as to the remaining of the fifteen (15) sites owned by KeySpan on Long Island, have risen to an unknown amount, and according to KeySpan, may be increasing as time goes by.

4. The SIR costs as to all the MGP sites are understated because they do not, according to KeySpan's consultants include the liabilities and costs associated with:

(a). repair of damages to, and restoration of natural resources;

(b). third party claims of economic and property damages;

(c). toxic tort injuries

5. It is likely that reported increases in costs are the result of the utilities imprudence, mismanagement, and gross inefficiency, in

(a). allowing the continuance of the serious pollution caused by the contaminants released from the site, including chemical compounds that are carcinogenic, and thereby continuing to place at risk the health of exposed persons, and continuing to cause damages to public natural resources and the environment.

(b). their resistance to, and delay in initiating and completing the removal and remediation of said contamination,

(c). failing to give due recognition to the importance of protecting the health, property and economic interests of the rate payer's and the environment, and instead using available cash flow to favor payments of dividends to stockholders, and compensation to management, instead of payments for SIR of MGP sites.

(d). Suppressing evidence of such imprudence and intentional violations of the federal and State Superfund and hazardous wastes laws, by claiming privilege, and moving to seal documentary evidence of such imprudence and violations, in the insurance company litigation, and by refusing to produce such documents in response to discovery requests in this case and in the class action

(e). Failure to evaluate regulated toxic contaminants regarded as dangerous to human health, and to disclose detailed evidence of their presence, and the presence of the MGP site contaminants of benzene and naphthalene, which are regarded by the National Cancer institute as probable environmental links to breast and other cancers, despite epidemiological investigations of the possible causes of elevated rates of cancer in the Town of Islip.

(f). Disseminating false, and deceptive statements, and assurances to, and concealing material facts from, the public regarding the Bay Shore MGP site remediation project

(g). Offering incomplete and misleading environmental and other required reports to State and County regulators in an effort to conceal their responsibility for environmental clean up, and its costs, by: a) shifting blame to others, b) omission of critical information, c) preparation of convoluted reports lacking clear and concise analysis

KEYSPAN'S FILINGS - PSC AND OTHER REGULATORY AGENCIES.

Q. Are you relying on any filings with the PSC to support your testimony, and if yes, please identify them, and what is their relevance.

A. Yes. I rely on the following documents obtained through investigation, and KeySpan's responses to discovery in these proceedings, which demonstrate the increasing MGP SIR costs incurred by LILCO and KeySpan.

a. LILCO's filing of Table 4. "Investigative Status of Long Island Lighting MGP Sites in PSC Case 94-M-1016 Appendix B. This document, Exhibit of the Appendix, misrepresented to the PSC that it had 6 MGP sites (Hempstead, Bay Shore, Sag Harbor, Rockaway Park, Patchogue & Glen Cove. It concealed the existence of additional MGP sites.

In reality KeySpan has reported in these proceedings that there are15 Manufactured Gas Plant sites, listed as Exhibit 6, Attachment 1. , which includes the following sites omitted from the LILCO 1994 list: Babylon, East Garden City- Stewart Avenue Holder, Far Rockaway, Garden City, Glenwood Landing, Halesite, Hempstead- Clinton Road, Inwood holder, Long Beach holder.

b. In response to Intervenor Nicholson's discovery request in these proceedings, KeySpan has produced a document, dated September 18, 2006, entitled. "Geographical Extent of KeySpan Former MGP Sites". (Exhibit of the Appendix).

It lists as Sites To Be Covered by Omnibus Order:
Far Rockaway Works, Flatbush Holders A,B, Patchogue Works, Fulton Works, Rutledge Holder, Scholes ST. Holder, Keap St. Holder, Metropolitan Works, Babylon Works, Front St. Holder, Williamsburg Works, Bay Ridge Holder A,B, Dangman Park works. Peoples Works, Inwood Holder, Wythe Ave. Holder, Jamaica Works, Jamaica Holder, Long Beach Holder, Equity Works, Greenpoint Works, Kings County Works, Garden City Holder, Belmont Holder, Brooklyn, Gas Light Works, Pymouth Holder, and Union Holder.

KeySpan has offered no explanation why the list of the number of MGP sites requiring remediation, was constantly understated in prior filings with the PSC, and SEC.

During the period of LILCO's and KeySpan's ownership and control the number of MGP sites requiring SIR, was not reported. As a consequence the cost of their remediation was understated, and continues to increase, as well as their associated costs, all of which costs KeySpan contends are uncontrollable. Exhibit of the Appendix

The significance of these misrepresentations and concealments, is that by omitting the additional MGP sites, LILCO, and KeySpan underestimated their liability for the SIR cost of those sites, evaded the PSC requirement of seeking contribution from potentially responsible parties, and pursuing

claims for recovery from insurance companies, thereby increasing the amount of recovery for SIR costs that they would seek to recover from the rate payers.

KeySpan knew or should, in the exercise of due diligence have known of these misrepresentation, and concealments, and should have timely reported the correct number of MGP sites to the PSC, before, or at the time, in May 1998, that it acquired the LILCO's gas plant sites.

KeySpan's failure to timely report to the PSC the actual number of its MGP sites, bars it from claiming the cost recovery benefits of any settlement in a prior rate case, including Case 97-M-0567.

KeySpan's delay in reporting the correct number of MGP sites to the PSC until the current proceedings, in order to maximize recovery from the rate payers of the MGP SIR costs, bars it from recovery of such costs.

c. The document "Bay Shore MGP Site, (Exhibit , of the Appendix) which is among those included in the KeySpan report, entitled "Geographical Extent of Keyspan Former MGP Sites", contains evidence, not only of the insignificant physical remediation of that site, but of KeySpan's effort to shift the blame to others.

It states that Construction- Phase I is scheduled for Fall 2006, and that as to Site Wide Activity, "Organized group hindering remedy implementation and site activities". Neither statement is true.

d. The document , "KeySpan MGP Plan", dated October 16, 2003, (Exhibit of the Appendix), acknowledges that MGP sites are among KeySpan's greatest public risks, that the Bay Shore MGP site is its complex MGP initiative in the State of New York, that there is significant residential population within the plume boundaries, that community concerns as to remediation in residential areas, include health impacts, and nuisance issues, impacts to property values, and to future use and enjoyment of property, and stigma impacts.

The document also acknowledges that responding to public concerns may involve corporate commitment, timely communication of information, temporary relocation of residents, acquisition of homes were appropriate, higher clean up costs, property value protections, and indemnification against future harm.

The document reports that during 2001, KeySpan undertook a major financial and liability modeling project to evaluate the relative risk and anticipated costs of the MGP sites, and ensure that a defensible financial model existed for financial forecasting, SEC reporting, and insurance recovery efforts, which required joinder with LILCO in suing thirteen insurance companies for coverage under environmental liability policies.

However, KeySpan concealed from the PSC the regulatory agencies, and the public, the results of its financial and liability modeling project as to the true MGP site remediation costs.

It concealed and continues to refuse to produce or disclose the contents of sealed documents in the Insurance Company Litigation.

It concealed the detailed expert testimony that contamination was continuing at the Bay Shore MGP site, and would continue until the source of materials of contamination were removed.

It concealed the bases of its consultant LECG's estimates of the SIR costs for the Bay Shore. (in excess of $208 million) and for the remaining six (6) MGP sites owned or controlled by KeySpan on Long Island, (for a total exceeding $600 million) and the reasons for the failure to recover maximum insurance proceeds as a source of payment of SIR costs.

It concealed from the PSC and the regulatory agencies, that the LECG estimates did not include the costs of repairing natural damages, (the dredging, removal and treatment of contaminated bottom sediments of Lawrence Creek, Watchogue Creek, Patchogue River, Sag Harbor, and Glen Cove,), and did not include liability for third party property and economic damage claims, and third party claims of toxic tort injuries.

THE INSURANCE COMPANY LITIGATION

Q. In a prior filing in this case you cited as relevant to the issues, the decision of the Supreme Court, New York County, in the case of Long Island Lighting Co. **v. Allianz Underwriters Ins. Co., 6 Misc.3d 1006(A), 800 N.Y.S.2d 349, N.Y.Sup.,2005. do you rely on it in support of your testimony, and if yes, what is its relevance.**

Yes, The Insurance Company Litigation contains evidence proving that KeySpan concealed from the PSC the regulatory agencies, and the public, the results of its financial and liability modeling project.

The Court there gave a history of the LILCO's MGP sites, the fact that KeySpan assumed the strict liability for their clean up, and the costs to remediate them. **It held that the cost to clean up the Bay shore site exceeded $208 million dollars, and the total cost to clean up all seven (7) sites exceeded $600 million dollars.**

Q. Are there any particular documents in the record of the Allianz Litigation that bear on the history of pollution of the Bay Shore MGP site, and SIR costs, and if yes, summarize the relevance of those documents.

A. Yes. They include the following:

a. The LILCO Strategy report, dated December 27, 1993, which is identified as Exhibit in the Appendix. It was previously sealed, but surfaced on January 10, 2007., and a copy given to ALJ Lynch. A link to the document on the website www.bayshoremgp.com, was served on the Active Parties List . This document is evidence of the history of pollution at the Bay Shore MGP site, and that LILCO chose to resist and delay remediation unless forced to and unless assured by the PSC of recovery of the costs from the rate payers.

b. LILCO's April 19,1994 Memo from Steve V. Dalton, Theodore O. Leissig, and Donna L. Riccobono to James T, Flynn, et al regarding "Subject: MGP Interim Work Plan Investigation and Remediation Program". This document, (Exhibit in the Appendix), projects various remediation time tables and cash flow scenarios for completion of the remediation of KeySpan's seven(7) MGP sites, including the Bay Shore MGP site, none of which was implemented by LILCO.

c. Associated Electric and Gas Insurance Services Limited's Memorandum of Law In Support Of Its Motion For Summary Judgment Regarding The MGP Sites, dated June 8, 2000. This document is identified as Exhibit of the Appendix. A copy was previously served in these proceedings on KeySpan's counsel and the ALJ. It summarizes the long standing history of pollution at the Bay Shore MGP site,, and LILCO's failure to qualify under pollution exclusion clauses and to comply with the notice provisions of certain of its environmental liability insurance policies, which led to the Court's dismissal of some of its claims against the insurance companies.

As a consequence, recovery of SIR costs from the insurance companies was substantially reduced, in violation of PSC requirements of seeking recourse to insurance policy proceeds before requesting recovery from the rate payers.

The AEGIS Memorandum also provided a history of LILCO's scrutiny from its regulators. In the context of the December 17, 1993 document, it shows that LILCO misrepresented to the PSC, and in its filings with the SEC, that it intended to pro-actively remediate the Bay Shore MGP and other sites, when in fact it chose to resist and delay remediation.

d. The transcript of the hearing held before Justice Ira Gammerman in the insurance company litigation, Exhibit of the Appendix. A copy of the transcript was previously served on KeySpan counsel and the Active parties list in support of Intervenor' s motion to reargue the ALJ ruling of December 20, 2006, denying the motion to unseal the December 27, 1993 and other insurance company litigation documents listed as privileged Protected Materials

This document is evidence of KeySpan's joinder with LILCO in the motion to seal the LILCO December 27, 1993 report, in order to prevent disclosure of the contents to the public for fear it would provide evidence that future plaintiffs may use on pollution claims against KeySpan

e. The Putnam report, dated Exhibit , in the Appendix. This document, prepared by KeySpan economic consultants evidences the increase in estimated SIR costs as of the date of the report.

f. The LECG report dated May 2003, Exhibit , in the Appendix. This document, prepared by KeySpan economic consultants evidences the increase in estimated SIR costs as of the date of the report.

g.. The LECG report dated December 31, 2003, Exhibit , in the Appendix. This document, prepared by KeySpan economic consultants evidences the further increase in estimated SIR costs as of the date of the report

The LECG reports inform KeySpan that the estimated costs of remediation do not include the cost of repairing natural resource damage at the MGP sites, which would involve the dredging, removing, and treating of contaminated bottom sediments in Lawrence Creek, Watchogue Creek, Patchogue River, Glen Cove, and Sag Harbor, and would also not include costs associated with liability for property damage, and toxic tort injury.

h. The KeySpan Memorandum dated November 5, 2001, in the Insurance Company Litigation, admits that the contamination at the Bay Shore MGP site is continuing, is causing property damage, and will continue to do until the source materials of contamination are removed. A copy of the Memorandum is Exhibit of the Appendix

Q. Do you know whether KeySpan provided copies of these documents to the PSC or other regulatory agencies, and whether KeySpan disclosed the contents of those documents to the public, and if yes what is the basis for your answer

A. Upon information and belief, KeySpan did not do so.

The basis of my answer, is that KeySpan knew of the December 27, 1993 LILCO documents, and of all the documents admitted in evidence in the insurance company litigation, and had copies of all of them, because it was a party to that litigation. It intentionally concealed from the PSC the other regulatory agencies, and the public, the details thereof, and continues to this day to refuse to disclose and produce copies, in order to keep those documents out of the evidentiary record of these proceedings. Its objective is to maximize its recovery of all MGP site SIR costs from the rate payers

KeySpan concealed the detailed expert testimony that contamination was continuing at the Bay Shore MGP site, and would continue until the source of materials of contamination were removed, and that the end of remediation was not in sight.

KeySpan also concealed the bases of its consultant LECG's estimates of the SIR costs, and how they were arrived at.

Q. Do you contend that the MGP SIR costs have also risen since KeySpan acquired them from LILC

A. Yes.

Q. Do you have any documentary evidence supporting your testimony relating to the increase SIR costs..

Yes. Apart from the reports of its economic consultants, I reviewed LILCO's and KeySpan's filings with the SEC and created a chart and graph tracing the increase, & identifying the source reference. A copy of the graph follows:

Q. Have you prepared a list of the SEC links, and an Exhibit containing chart and graph showing the increases, and A Summary Analysis of KeySpan MGP Cost Allocation and Remedial Spending.

A. Yes. The list of SEC filings follow, and Exhibit is in the Appendix.

KeySpan All Filings

KeySpan 10-K Filings

KeySpan 10-Q Filings

LILCO Filings

LILCO 10-K Filings

LILCO 10-Q Filings

LILCO All Filings

Brooklyn Union Gas 10-K Filings

Brooklyn Union Gas 10-Q Filings

LILCO 10-K 12/31/93 *

LILCO 10-Q 03/31/94 *

BUG 10-K 09/30/94 *

LILCO 10-K 12/31/95 *

LILCO 10-K 12/31/96 *

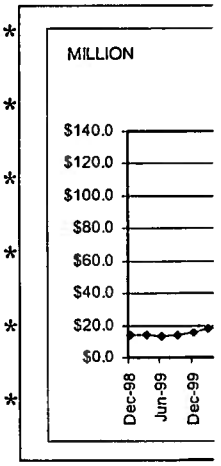
LILCO 10-Q 06/30/97 *

LILCO 10-Q 09/30/97 *

LILCO 10-Q 12/31/97 *

LILCO 10-K 03/31/98 *

LILCO 10-Q 06/30/98 *



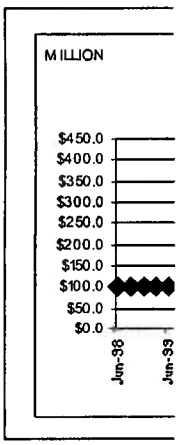
Q. Did you prepare a Summary Analysis of KeySpan MGP Cost Allocation and Remedial Spending for its MGP sites.

A. Yes. An examination of publicly available Securities and Exchange Commission (SEC) filings by KeySpan Corporation reveals certain financial aspects of

manufactured gas plant (MGP) environmental liability. Specifically, annual 10-K financial reports and quarterly 10-Q financial reports list certain categories of financial liability as well as methodologies for allocating these environmental liability costs.

Generally speaking, in any given year of operation, the corporation will file three (3) 10-Q quarterly reports (March 31st, June 30th and September 30th) and one (1) 10-K annual report (December 31st). Amended quarterly and annual reports may also be filed. Thus a table (or spreadsheet) may be created where the first column in the table represents the date of any given SEC financial filing and relevant financial aspects of MGP environmental liability (additional columns) can be tracked over time.

The table created for the summary analysis of KeySpan's MGP environmental and financial liability tracks the following aspects by date;



1) Information source (10-K or 10-Q)
2) Total number of reported KeySpan MGP sites in New York State
3) Sub-total of reported MGP sites for KEDNY (KeySpan Energy Delivery New York)
4) Sub-total of reported MGP sites for KEDLI (KeySpan Energy Delivery Long Island)
5) Dollars spent (in millions) on Investigation/Remediation at KEDNY MGP sites
6) Dollars spent (in millions) on Investigation/Remediation at KEDLI MGP sites
7) Total dollars spent (in millions) on MGP Investigation/Remediation (NY + LI)
8) Estimated remaining cost to Investigate/Remediate KeySpan's New York MGP sites
9) Accrued remaining 'Regulatory Asset' (an accounting entry subject to interpretation)
10) Report Comment (Could the remaining cost be substantially higher? YES, NO or amt.)

Upon completion of the table (spreadsheet) simple line charts can be created showing dollars over time. Two such relevant line charts are provided and show trends for Total KeySpan MGP Spending over time and the reported substantially increasing 'Regulatory Asset' over time. The 'Regulatory Asset' is believed to represent the 'Remaining' cost of MGP cleanups in New York as well as other remedial costs and deferred non-remedial costs. The steady increase in the amount of the Regulatory Asset reflects KeySpan's continuing delay in performing the MGP SIR projects.

Q. Are you able to provide the table you refer to

A. Yes. The table is Exhibit in the Appendix

Q. What do the exhibits indicate as to KeySpan's policy with respect to recovery of the costs of MGP clean ups

A. It is clearly stated in all KeySpan SEC filings that all costs associated with MGP cleanups will be applied to the ratepayers and will not be absorbed by the company.

Q. How does KeySpan intend to recover such costs.

A. Applications are routinely submitted by KeySpan to the New York Public Service Commission (PSC) to apply these cost to ratepayers natural gas utility bills.

KEYSPAN FACT SHEETS AND PUBLIC STATEMENTS

Q. are you familiar with the statements KeySpan has made in "Fact Sheets" disseminated to the public or at meetings with the public.

A. Yes.

Q. Have you compared the statements in the "Fact Sheets" with those in the documents in the Insurance Company Litigation identified above in your testimony.

A. Yes.

Q. Do the Fact Sheets contain misrepresentations or material concealments as compared to the documents in the Insurance company Litigation or in KeySpan's responses to discovery in these proceedings..

A. Yes. They are not consistent. The statements in the Fact Sheets are contradicted by, and or conceal facts stated in the Insurance Company Litigation documents, and in KeySpan's responses to discovery in these proceedings.

Q. Can you give some examples of misrepresentations and concealments, & identify the documents you rely on to prove them.

A. Yes.

a. KeySpan's knowledge of the adverse impacts of its MGP sites is

summarized in the KeySpan MGP Plan document dated October 16, 2003, submitted to its Board of Directors, which include but are not limited to health, nuisance, fiscal, property values, and stigma. A copy of this document is Exhibit of he Appendix.

b. None of KeySpan's Fact Sheets present the information contained in the KeySpan MGP Plan document.

c. KeySpan's knowledge, as evidenced in the November 5, 2001 Memorandum in the Insurance Company Litigation, and in its admission in a response to Intervenor's Request to Admit, that the contamination is continuing, causing property damage and will continue until the souce materials of contamination are removed, and that end of remediation was still not in sight despite the lapse of over seven (7) years since KeysSpan signed the consent order with the DEC in September 1999, agreeing to clean up the contaminants.

d. None of KeySpan's Fact Sheets present the information contained in said Memorandum or admission.

e. The LECG reports provide estimates of the cost of SIR MGP.

f. None of KeySpan's Fact Sheets inform the public of KeySpan's request that the PSC permit KeySpan to recover from the rate payers the full cost of SIR MGP site remediation.

g. The KeySpan Fact Sheets misrepresented to the public that the continuing exposure to the MGP site contaminants, presented no risk to human health, and never informed the public that they were exposed to MGP site contaminants including PAH's (benzene, naphthalene, BTEX,), which are regarded by the National Cancer Institute as environmentally probable links to breast cancer.

h. The Keyspan Fact Sheets misrepresented to the public that exposure of their properties to the contaminants did not cause any depreciation in, or stigmatize their property values, when in fact the KeySpan October 16, 2003 MGP Plan document stated the contrary as a matter of fact.

i. The KeySpan Fact Sheets misrepresented to the public that the scope of the remediation project would protect their health, homes and environment against damage from the contaminants.

j. In fact the Suffolk County Department of Health Services communicated in writings to KeySpan, on March 3, 2004, and in December , 2004, their dissatisfaction with the remediation effort, in reports identified in the Like Affirmation dated September 19, 2006, in the class action, copies of which

are included as part of Exhibit of the Appendix, none of which were disclosed by KeySpan in its Fact Sheets.

On December 22, 2006, the Suffolk County Department of Health Services, in a letter to KeySpan expressed its dissatisfaction with the remediation effort, and demanded that KeySpan expedite the clean up, by implementing specific measures, to be performed. A copy of the letter is Exhibit of the Appendix.

k. KeySpan's Fact Sheets misrepresented to the public that its policy for testing and remediating off – site properties that were environmentally impacted by operations of KeySpan or predecessor companies is designed to meet the requirements of the NYS DOH and NYS DEC, and to work responsibly, productively and cooperatively with property owners and the communities that KeySpan serves.

l. In fact, its Corporate Policy Statement of January 31, 2000, Exhibit of the Appendix, set forth the scripted directions that KeySpan representatives were to follow, in dealing with the public

1. The script expresses the implied presumption that it is unnecessary to evaluate properties outside the boundary area defined by KeySpan, unless the property owners prove the presence of contaminants on their properties, thereby shifting the burden of proof from KeySpan to the victims of the contamination.

2. Emphasize that monitoring does not indicate there has been exposure to hazardous material. That it remains premature to discuss whether remediation of mitigation measures are required, and under no circumstance discuss or characterize the findings of monitoring at other off site locations, or discuss the reactions of other property owners to those findings, and explain they are not relevant.

3. Take the position that KeySpan will not make offers of compensation for claims of diminished value, and do not make any offer during any discussions with property owner.

KeySpan representative David Manning, in public statements reported on Cable Vision News 12, on December 8, 2006, and on January 18, 2007, stated that the cost to clean up the contaminants from the Bay Shore MGP site was $40 million dollars, when in fact in the Insurance Company Litigation, KeySpan representatives, in 2003, presented written reports which were admitted in evidence, and testified under oath that the cost to remediate the Bay Shore MGP site exceeded $208 million, which amount was accepted by the Court in its opinion Long Island Lighting Co. v. Allianz Underwriters Ins. Co.,6 Misc.3d 1006(A), 800 N.Y.S.2d 349, N.Y.Sup.,2005.

Q. What additional documents do you rely on in support of your testimony that KeySpan has acted imprudently in regard to the remediation of its MGP sites, and in particular the Bay Shore site.

A. KeySpan's responses to my discovery requests, show that the Board of Directors, and management were not sufficiently involved in the remediation process, to oversee its effectiveness, and cost control to prevent the costs from rising to KeySpan's current estimates. Instead they decided that the costs were uncontrollable, and decided they could rise to their present levels, and be recovered from the rate payers. Although they had the available cash flow in each of the years 1998 through 2006 to pay for, and expedite the remediation of the MGP sites, they chose not to do so, and used the cash flow to pay dividends to stockholders, generous compensation to management, and for other uses less important than the remediation essential to protect public health and the environment.

Q. Can you identify the document requests you made and KeySpan's responses
A. Yes.

In my document requests, IL 1 and IL 1-2, I asked for presentations to the Board of Directors and Management on the subject of such remediation, Committee reports to them, resolutions and policy statements of the Board, and management, minutes of meetings, Reports to Board and Management & Committees, Instructions or directions by the Board or management to the Legal, engineering and public affairs department as to the subject of remediation of MGP sites, and the financing, timing and projected period of remediation projects, and documents sealed in the Insurance Company Litigation.

KeySpan's responses were that

a. there were no committee reports concerning MGP remediation. This was not true, as in a later response to discovery, KeySpan produced the document dated October 16, 2003, "KeySpan MGP Plan", which was prepared by its corporate governance committee

b. Resolutions and policy statements would be made available for inspection at KeySpan's offices. However inspection of the records made available did not yield any resolutions or policy statements.

c. there were no documents recording instructions or directions by the Board of Management to the cognizant departments as to the subject of remediation of MGP sites, and the financing, timing and projected period of remediation projects

d. KeySpan objected to production of the sealed documents, but did not identify the documents, and the ground of privilege asserted as to each.

Q. Can you identify specific Interrogatories you served, and KeySpan's responses
A. Yes.

a. Interrogatory request IL -2. part 6 requested Keyspan's estimated date of completion of remediation of each of the MGP sites via removal of the source material of contamination.

b. KeySpan responded that it does not have the information requested, that it does provide estimated timelines as part of its monthly progress reports to the DEC. However these timelines do not contain an estimation of the date of completion of remediation of each of the MGP sites via removal of the source material of contamination.

c. Interrogatory request IL -2 Part 7 requested KeySpan's estimate (yearly) of the quantity and composition of chemical compound contaminants released from the Bay Shore MGP site, the extent of the geographic area over which the plumes of contaminants have spread, the quantities of source materials of contaminants remove and yet to be removed.

d. KeySpan responded that it does not have the estimates (yearly).

e. IL-3-20 requested that KeySpan provide for each of the years 1998 to 2006, the amounts of cash flow available to pay dividends, to pay for SIR for Bay shore MGP site, and available to pay SIR for KeySpan remaining MGP sites, and the amount of cash flow used to pay dividends, Bay Shore MGP SIR expenditures, and MGP SIR expenditures for the remaining KEDLI and KEDNY MGP sites

f. KeySpan responded that after the payment of dividends the Company does not prioritize and dedicate the use of its remaining cash flow to fund any one particular item in lieu of another. If there is a shortfall in internally generated cash to cover the sum total of funds required for construction activities, MGP expenses and working capital requirements, the Company will finance the difference externally.

g. KeySpan's responses provide evidence that during the entire period from 1998 to 2006, the Board of Directors placed payment of dividends to shareholders above payment of MGP remediation, that it had and still has, no standard for prioritizing the use of available cash flow, and that it did not use cash flow to expedite remediation, despite the fact that there was sufficient generated cash to cover the sum total of funds required for construction activities, MGP expenses and working capital requirements. The Company has not shown that it would have been necessary to obtain external financing in order to cover payment of MGP expenses.

h. IL IR 3-21 requested for each of the years 1998 to 2006, the amounts forecast to be paid using cash flow available before dividends were paid for Bay Shore MGP and remaining MGP SIR expenditures, and copies of Board of Directors' minutes relating to the use of such cash flow, and of any presentations made to the Board.

i. KeySpan responded that the amount it spends on MGP site investigation and remediation in any particular year is not determined based on the level of its cash flow, and that its MGP SIR activities are dictated by work plans that have been submitted to and approved by the DEC in response to DEC orders to remediate the various MGP sites, and that once the work plans are approved by the DEC, KeySpan performs the necessary work to execute them irrespective of the level of its cash flow.

j. This response is further evidence of KeySpan's imprudence because over seven(7) years, ago Keyspan signed the DEC consent order agreeing to clean up the Bay Shore MGP site, and yet, the contamination is continuing with no end of remediation in sight.

k. KeySpan's delay in remediation, has resulted in failure to timely submit and obtain the DEC approvals of work plans., which in turn, according to KeySpan's response, did not require it to use its cash flow to pay for MGP SIR costs.

l. KeySpan's policy and practice is to delay the submission of work plans for the physical remediation of the MGP sites, thereby avoiding the need to use its cash flow for that purpose, even though such delay substantially increases the ultimate cost, which it says is uncontrollable, and confront KeySpan with the risks detailed in the KeySpan MGP Plan document of October 16, 2003.

m. The PSC requirement that costs be prudently incurred is not met by such practice which turns the standard on its head. If the cash flow is available KeySpan must use it to expeditiously remediate MGP sites. It is not prudent to delay remediation, and allow "uncontrollable costs" to increase, and then resort to internally generated cash flow, or external financing to cover any short fall.

n. IL IR 3-28 asked whether during the period May 1998 through 2006, KeySpan's Board of Directors or any responsible official adopted any policies or guidelines to be complied with in determining the prioritization and utilization of cash flow during that period.

o. KeySpan responded in the negative.

p. IL IR 3-30 asked whether for each of the years from May 1998 through 2006, did KeySpan estimate the SIR costs related to and infra-structure damage of facilities owned by the Long Island Power Authority, the MTA (Long Island Railroad), and the roads of the Town of Islip and the County of Suffolk, the estimated toxic tort damage liability, natural resource damage, o the economic cost of remediation, and the diminution in property value, referred to as not considered in the LECG report.

q. KeySpan responded that it did not make any such estimates.

r. IL IR 3-31 asked whether KeySpan made any calculation of natural resource damage to Lawrence Creek or Watchogue Creek caused by the discharge of Bay Shore MGP site contaminants, or any calculation of the cost of restoring the condition of such natural resources, or any calculation of the cost of removing the sourc materials of contamination from each of the facilities described in interrogatory 29.

s. KeySpan responded that it did not.

t. IL IR 3-33 asked whether Keyspan's estimates of SIR costs provided to the SEC, FERC, PSC, credit agencies, security analysts, and investment bankers include KeySpan's estimates of SIR related to natural resources, toxic tort, diminution of property values and infra structure damages.

u. KeySpan responded that they did not.

Q what do you regard as the relevance of KeySpan's responses to the preceding interrogatories

A. It appears that KeySpan made no effort to determine the economic cost of SIR remediation at any time during the period May 1998 through 2006, and it made no effort to disclose the true economic costs to the regulatory agencies, and the entities responsible for evaluating the merger.

KEYSPAN MANAGEMENT'S DISREGARD OF REMEDIATION OBLIGATIONS

Q. Do you have any further evidence of KeySpan's approach to performing its remediation obligations.

A. Yes, the Board of Directors and management did not inform and involve themselves in, or give MGP remediation sufficiently serious attention.

a. DR 2.3-2.18 requested that KeySpan produce with respect to the Bay Shore MGP site, reports of the plant Superintendent and of its General Manager, notices of violation from any agency, all plant drawings, all reports of valuation, all reports of consulting engineers engaged to provide professional work or other assessments on the plant, all photographs of the plant (aerial or terrestrial0 such as commonly accompany Reports of Valuation, motion pictures, slides, or their images relative to the ;company or to the plant. Work orders and contracts for construction or modification of the plant, lists of equipment in place or on order Tables of quantities of gas and by-products produced and handled or marketed, drawings and inventories prepared for and/or submitted to insurance companies, list of key operating and managerial personnel for the plant, Company organizational charts showing personnel and lines of authority.

b. KeySpan's response was that it has not located any documents responsive to these requests, that the MGP ceased operation decades ago, and there has been no Superintendent or General Manager in the time since the formation of KeySpan

c. KeySpan made no effort as part of its due diligence in acquiring this MGP site, to familiarize itself with documents and operating history whose review is essential to undertake an efficient remediation project.

d. Il IR 4-1 requested KeySpan to produce copies of all back up in house and consultants' reports relied on by the Corporate Governance Committee which prepared the KeySpan October 16, 2003 MGP Plan document, and the MGP plan documents for the years 2004 and 2006

e. KeySpan responded that the Corporate Governance committee did not prepare MGP plan documents for the years 2004, and 2006.

e. The October 16, 2003 document presented to the Board of Directors, the adverse fiscal, nuisance, health, stigma & property damage impact, and community concerns related to the Bay Shore MGP site, and characterized the remediation as one of the company's highest risks, and complex initiatives.

f. Yet the Board did not produce documents evidencing further discussion of those matters. It did not produce documents reflecting what if any action, it took, as a follow up to address the problems detailed in the October 16, 2003 document, and its response to IL IR 4-2, and it admits that it did not rely on any consultant's reports. estimating the economic costs of SIR remediation relied on by the Committee.

g. In response to IL 1R 4-4, KeySpan responded that it maintained no records that would permit it to identify the precise reports relied on by individuals in preparing particular presentations supporting the following subjects covered by the October 16, 2003 report: Corporate Imperatives, Bay Shore Complex, Remediation in Residential Areas (Community Concerns),Responding to Public Concerns, Three Types of Cost Estimates, the Cost Estimating Process, Risk Transfer, Recovery Mechanisms- Rate Orders.

h. It said that the knowledge of the individuals who prepared the presentation was used to prepare the presentation. but did not identify the individuals or the sources of their knowledge.

i. This response either contradicts the KeySpan responses that there was no discussion of MGP remediation by the Board of Directors, or proves that the Board did not take the matter seriously, given KeySpan's responses that no Board of Directors minutes were taken regarding this subject, and no records were maintained of the presentations.

j. IL IR 4-6, asked KeySpan to explain the specific factors which accounted for the increases of the Bay Shore MGP SIR costs in the reports submitted by KeySpan;s consultants Putnam Hayes & Bartlett, May 14, 1989, and August 1998, and by LECG May 2003, and December 21, 2003

k. KeySpan responded that for each of the cost analyses, the expected extent of contamination and remediation requirements potentially associated with such contamination is based on the total information available with respect to each site. KeySpan has no breakdown of specific factors other than as presented in such reports.

This response is evidence that the Board of Directors and Management did not undertake to critically review the consultants' report, and ask questions that would explain what was causing the increases of the Bay Shore MGP costs, as time went on and what measures could be taken to control and minimize such costs.
Instead the Board decided that it would characterize the costs as uncontrollable.

m. IL IR 4-8 requested KeySpan to set forth the percentage increases in SIR costs attributable to each of the cost components of their reports, including by not limited to inflation, scope of projected SIR, costs of labor material, supplies, consultants' and professional service fees, such as engineering project manager, regulatory compliance etc.

n. KeySpan responded that the breakdown of percentage increases by cost category is not available, which evidences the Board of Directors and Management's lack of involvement, and indifference to what was causing SIR costs to increase

o. IL IR 4-18 asked whether Keyspan delivered any original certified lab data for the Bay Shore SIR Study to the DEC, State Department of Health, and Suffolk County Department of Health Services.

p. KeySpan responded that it does not know.
thus demonstrating the Board of Directors and Management's detachment from the remediation process, which is highly dependent on the delivery of certified laboratory reports of the results of the sampling, testing and monitoring of the MGP site contaminants, and the progress of the remediation project. The Lab data is essential for the regulatory agencies to assess existing and potential adverse risks to health, property, and the environment resulting form exposure to the contaminants.

q. IL-8.2 requested LILCO's and KeySpan;s organizational structure in which responsibilities of control and supervision of the SIR were and are defined and assigned.

IL- 8.3 requested LILCO's and KeySpan's systems for monitoring and controlling SIR budgets, estimates, schedules and cost controls.

r. KeySpan responded that it cannot answer questions for LILCO , and that KeySpan's system is maintained as a computer program, and cannot be reproduced as a document.

s. KeySpan's inability to answer questions as to LILCO's cost control system means that it can not claim LILCO acted prudently with respect to MGP SIR costs recovery during its ownership of the MGP sites, and bars KeySpan from recovering SIR costs that rose or whose increases are due LILCO's mismanagement, during LILCO's ownership.

t. KeySpan's failure to produce documents as to MGP SIR cost control systems reproducible by exercising its computer program, which would yield the information requested, precludes KeySpan from satisfying its burden of proving the costs were prudently incurred.

u. IL -8.11 requested copies of Board of Directors minutes, resolutions and management involvement, including:

1. information the Board received from management which would enable it to evaluate properly critical decisions in SIR project activities.

2. Evaluations and investigations regarding SIR project scheduling and costs

3. Directions & instructions relating to the SIR

Actions taken to contain the SIR cost.

KeySpan responded that these documents were already provided, & referred to Bates stamps Z00157 through Z00178 and Z00585.

However the Bates stamped documents did not include the ones requested with the exception of the Keyspan MGP plan of October 16, 2003, presented to the Board of Directors by the Corporate Governance Committee.

w. IL-8.4 requested documents describing the supervisory responsibilities, departmental and personal files of Theodore Leissing, KeySpan's project manager, and of any contractors and engineering consultants, who performed services related to the SIR.

KeySpan responded there is no document describing Leissing's responsibilities for SIR activities, and that no contractors or consultants have supervisory responsibilities for SIR activities, and so no documents exist.

x. IL-8.7 requested the remediation completion date, and slippages each year from 1998 to the present as to all MGP sites.

KeySpan responded there is no document that sets forth this information.

y. IL-8.8 requested details as to the extent of budget and schedule variances, and the causes thereof, as to all MGP sites.

**KeySpan responded that the information is contained in monthly reports to the DEC previously made available, but such reports, as have been provided, do not provide the requested information as to all MGP sites,
and do not show the causes of budget and schedule variances. KeySpan admits there is no documents that details budget variances.**

The deficiencies in KeySpan's budgeting, and scheduling procedures raise serious questions as to its management's ability to control SIR costs.

z. IL-8.9 requested the amounts of any cost increases and durations of delays KeySpan contends were due to factors beyond its control.

KeySpan responded that no documents exists which contains this information, and that it's position is that all cost increases and the timing of investigation and remediation completion are subject to factors beyond KeySpan's control. Both timing and costs are driven by the company's need to comply with evolving applicable laws, rules, regulations and policies in a prudent manner.

In effect, KeySpan's response rejects the PSC's prudency rule that the utility has the burden to show that the SIR expenditures are cost- effective, and that the company has taken all reasonable and prudent steps to obtain cost recovery from all available funding sources.

KeySpan's response is consistent with the evidence of its Board of Directors' and management's minimal involvement in actions to controlling the costs of MGP SIR activities.

<u>KEYSPAN POLICY - CORPORATE PROFIT TRUMPS REMEDIATION</u>

Q. What evidence did you obtain as to KeySpan's utilization of available cash flow during the period 1998 to the present.

A. I served discovery requests designed to determine how KeySpan balanced the interests of its stockholders and rate payers.

a. IL 7-3 and 7-4 presented to KeySpan, a series of hypothetical questions holding all other factors equal, assuming the total cost estimates for remediation of all seven MGP sites were incurred, and paid for by the utility, with no recovery from the rate payers, or 20% recovery, or 50% recovery

b. The questions asked were what would be the effect on the rate of return on common equity, and credit rating in each of said years, if any, over a period ranging over the next one year, three years, five years and ten years.

c. KeySpan's response was that it was seeking a seven year recovery period of SIR expenditures in its stand alone cost of service, and that the Rate Plan assumes that SIR Expenditures will be deferred to and recovered via the Balancing Account over the ten year Rate Plan period.

d. However KeySpan added that in any PSC decision which does not allow KeySpan 100% recovery from the rate payers, would result in a significant write - off and negatively impact the Company's return on common equity and credit ratings.

Q. What is the relevance of this response.

A. KeySpan's failure to quantify the write off and negative impact on the Company's return on common equity and credit ratings, is further evidence that the Board of Directors has made no serious effort to take the interests of the rate payers into consideration, and balance their interests with that of the stockholders. Instead, the Board of Directors's policy and decision is to charge the entire cost of remediation to the rate payers.

IL IR 5-4 Requested that KeySpan produce:

Q. Produce copies of all resolutions adopted, orders or directions given by the Boards of Directors, or any officer, of both corporations, and the minutes of hearings leading to such adoptions or directions, establishing policy, strategy, or directions going forward, if the merger, or any stand alone rate plan, is approved, and/or if the merger or stand aline rate plan is disapproved, as to:

a. recovery of past and future SIR costs, and regulatory assets, from the rate payers, as to each MGP site;

b. proposed rate plans for such recovery, as to each MGP site;

c. use and prioritization of available cash flow, for each of the next 3, 5, or 10 years, as between payment of stockholder dividends, management compensation, capital investment, and other expenditures, and payment of past and future SIR costs, and regulatory assets.

d. provide, the estimated future SIR costs as to each MGP site which will have to be expended to complete remediation in compliance with applicable laws, regulations and Orders on Consent.

A. KeySpan's response was:
(a), (b) & (c) - No such documents exist.
(d) - KeySpan has previously provided information concerning its estimates of future SIR costs in response to Intervenor's discovery.