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STATE OF NEW YORK
BEFORE THE
PUBLIC SERVICE COMMISSION

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Corresp.

- CASE 06-M-0878 - Joint Petition of National Grid PLC and KeySpan Corporation for Approval of Stock Acquisition and other Regulatory Authorizations
- CASE 06-G-1185 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York for Gas Service.
- CASE 06-G-1186 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island for Gas Service.

THE NRG COMPANIES' EMERGENCY MOTION TO COMPEL EXPEDITED RESPONSES TO INTERROGATORIES AND DOCUMENT REQUESTS FROM KEYSpan CORPORATION AND NATIONAL GRID PLC

**To: The Honorable Gerald L. Lynch
The Honorable Michelle L. Phillips**

Pursuant to Rule 3.6 of the Rules and Regulations of the Public Service Commission (the "Commission"), NRG Power Marketing Inc., Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, and Oswego Harbor Power LLC (collectively the "NRG Companies") (1) hereby move this court for an order compelling KeySpan Corporation and National Grid PLC (collectively, the "Joint Petitioners") to respond to the NRG Companies' discovery requests numbered one through ten, served July 13, 2007 (the "NRG Discovery Requests"), no later than Friday, July 20, 2007 so that the discovered material may enter the record during the July

This Emergency Motion should be granted in light of the recent accelerated pace of the above-captioned proceeding. Specifically, the Merger and Gas Revenue Requirement Joint Proposal (“Merger JP”) was not publicly submitted by the Joint Petitioners in this proceeding until July 6, 2007. Until that time, the NRG Companies had no knowledge of the specific terms and conditions of Article VIII of the Merger JP, which describes circumstances under which the merged entity will be permitted to retain ownership of the Ravenswood Station. As described in the NRG Companies’ Statement of Opposition, Article VIII leaves important vertical market power questions unanswered, in particular the post-merger bidding behavior of the single largest generator in New York.¹ However, due to the July 11, 2007 comment date, the NRG Companies were unable to conduct meaningful discovery prior to filing their Statement in Opposition.²

During a conference call on the afternoon of Friday, July 13, 2007 to address what, if any additional process was warranted by the Statements in Opposition filed by NRG and others, the Administrative Law Judges ruled that an additional day of hearings would be held on Monday, July 23, 2007 solely to address Article VIII of the Merger JP. Shortly after the conclusion of the conference call late Friday afternoon, the NRG companies served by e-mail ten discovery requests on representatives of the Joint Petitioners, all of which seek information that is critical to understanding the alternatives to the divestiture of Ravenswood, yet that was missing from the Article VIII of the Merger JP filing.³ Moreover, the information requested is of the type that is readily

Rules and Regulations, the Joint Petitioners are not required to respond for 10 days, or until after close of business on the last day of the evidentiary hearing, July 23rd.

Without knowing more details concerning the alternatives to divestiture of the Ravenswood Station that are only partially described in the Merger JP, the NRG Companies and other parties will be deprived of their due process right to meaningfully participate in next Monday's evidentiary hearing, and the Commission will be left with an incomplete record upon which to base its decision. Accordingly, the Joint Petitioners should be required to respond to the NRG Discovery requests no later than close of business on Friday, July 20, 2007. Further, in light of the immediate need for discovery, the NRG Companies respectfully request that Your Honors require that any response to this Motion be submitted by noon on Wednesday, July 18, and a decision on the Motion by close of business on Wednesday, July 18.

CONCLUSION

WHEREFORE, for the foregoing reasons, the NRG Companies respectfully request that Your Honors grant this Emergency Motion for Clarification or, in the Alternative, Reconsideration in a manner consistent with the arguments and requests for relief set forth herein.

Dated: July 17, 2007

Respectfully submitted,

THE NRG COMPANIES

Christopher C. O'Hara

Christopher C. O'Hara
Assistant General Counsel - Regulatory
NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540
609-524-4601
chris.ohara@nrgeenergy.com

EXHIBIT A

The NRG Companies' Discovery Requests, July 13, 2007

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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THE NRG COMPANIES' DISCOVERY REQUESTS

TO KEYSpan CORPORATION AND NATIONAL GRID PLC

(COLLECTIVELY, THE "JOINT PETITIONERS")

1. Reference Article VIII of the Merger and Gas Revenue Requirement Joint Proposal ("Merger JP"). Please identify and provide the NRG Companies with a copy of all communications with any person or entity including, without limitation, electronic mail, voicemail, and/or other correspondence pertaining to the retention of, the divestiture of, or any actual or potential agreements or transactions involving the Ravenswood Station.
2. Reference Article VIII of the Merger JP. Have the Joint Petitioners had any communication with FERC Staff regarding the retention of, the divestiture of, or any actual or potential agreements or transactions involving the Ravenswood Station? If so, please describe the nature, timing, and content of all such communications and provide the NRG Companies with a copy of any written or recorded evidence of such communications, including but not limited to notes, memorandum, voicemails, e-mails, or other documentary evidence.
3. Reference Article VIII of the Merger JP. Have the Joint Petitioners had any communication with the United States Department of Justice regarding the retention of, the divestiture of, or any actual or potential agreements or transactions involving the Ravenswood Station. If so, please describe the nature,

4. **Reference Article VIII of the Merger JP.** Have the Joint Petitioners performed, or engaged a third party to perform, any analysis of the market impact of the merged company's divestiture and/or prolonged ownership of the Ravenswood Station? If so, please provide all documentary evidence pertaining to such analysis, including but not limited to, a copy of any reports, memorandum, notes, or other documentary materials.
5. **Reference Article VIII of the Merger JP.** Have the Joint Petitioners performed, or engaged a third party to perform, any analysis of merger benefits and/or costs associated with the terms and conditions of Article VIII?
6. **Reference Article VIII A(b) of the Merger JP.** What is meant by the term "output of the Ravenswood Station"? What does National Grid intend to do with the Ravenswood Station's energy and capacity during the three-year term of the forward financial sale contract referenced in Article VIII? Please identify and provide copies of any documents or communications pertaining to the "output of the Ravenswood Station" during the three-year forward financial sale contract.
7. **Reference Article VIII of the Merger JP.** Please provide all documents and communications pertaining to how the proposed Ravenswood conditions will mitigate the identified concern of vertical market power.
8. **Reference Article VIII of the Merger JP.** Please provide all documents and communications pertaining to the impact of the proposed Ravenswood terms and conditions on the merged company.
9. **Reference Article VIII of the Merger JP.** Please provide all documents and communications pertaining to the impact of the proposed Ravenswood terms and conditions on the New York City market, generally, and specifically the anticipated long-term impact on the consumers in Zone J and New York City's desire for new cleaner-burning generation.
10. **Reference Article VIII of the Merger JP.** Please provide all documents and communications pertaining to whether the proposed Ravenswood conditions are consistent with the Commission's policy separating generation from transmission and the Commission's desire for new generation in New York City through longer-term contracting.

Please provide copies of all responses to:

Christopher C. O'Hara

Kathryn Wig