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JUNE 14, 2004  
FEDERAL ENERGY REGULATORY COMMISSION

**BY HAND DELIVERY**

Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

ORIGINAL

Re: KeySpan Energy Development Corporation v. New York Independent System Operator, Inc.: Docket Nos. EL02-125-000 and EL02-125-001

Dear Secretary Salas:

Enclosed for filing please find an original and fourteen (14) copies of a Stipulation and Agreement addressing the financial issues in Docket Nos. EL02-125-000 and EL02-125-001 ("Financial Settlement"). This Financial Settlement resolves the financial issues arising out of the interconnection of new generating facilities identified as the Class of 2001 to the New York Control Area transmission system. Contemporaneous with this filing, the New York Independent System Operator, Inc. ("NYISO") will file a Settlement Agreement covering non-financial issues for future cost allocations. The NYISO's Settlement Agreement, together with this Financial Settlement, constitute a complete settlement of this proceeding. This Financial Settlement, however, may be approved by the Commission on a stand-alone basis and does not require Commission adoption of the NYISO's Settlement Agreement to become effective.

The New York Power Authority, Consolidated Edison Company of New York, Inc., KeySpan Energy Development Corporation, KeySpan-Ravenswood, LLC, Reliant Resources, Inc., PSEG Power In-City I, LLC and Astoria Energy LLC (the "Settling Parties"), respectfully request that the Commission approve the Financial Settlement promptly and, in any event, no later than September 15, 2004.

This docket was assigned to Judge Jeffie J. Massey who issued an Initial Decision on May 8, 2003. The Initial Decision was certified to the Commission on May 8, 2003. Judge Carmen A. Cintron served as the Settlement Judge.

Pursuant to 18 C.F.R. § 385.602(c)(1), the Settling Parties submit the following:

1. The settlement offer is in the form of a Stipulation and Agreement among NYPA, Consolidated Edison Company of New York, Inc., KeySpan Energy Development Corporation, KeySpan-Ravenswood, LLC, Reliant Resources, Inc., PSEG Power In-City, LLC and Astoria Energy LLC.

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June 14, 2004  
Page 2

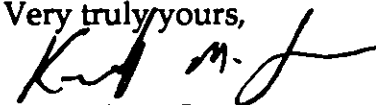
2. A separate explanatory statement is included as Section I of the Stipulation and Agreement.

3. The record is that certified to the Commission by Judge Massey on May 8, 2003.

We are also providing a draft Commission letter order approving the settlement and a diskette containing such in Microsoft Word format.

**Pursuant to Rule 602(d), I hereby notify the participants in this proceeding and each person required by the Commission's rules to be served with changes to the NYISO's OATT and its Market Administration and Control Area Services Tariff ("Services Tariff") that comments on the Settlement Agreement may be filed no later than July 6, 2004 [the first business day 20 days after the filing of the Settlement Agreement] and reply comments may be filed no later than July 14, 2004 [30 days after the filing of the Settlement Agreement].**

Very truly yours,



Kenneth M. Simon  
Counsel for New York Power Authority

Enclosures

Cc: Judge Carmen A. Cintron  
Official Service List (Regular Mail)  
Counsel for Settling Parties (Electronic Mail)  
William Bennett, Esq. for Commission Trial Staff  
David Drexler, Esq. for Staff of the  
New York Public Service Commission(Electronic Mail)

ORIGINAL

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

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FEDERAL ENERGY  
REGULATORY COMMISSION  
In reply refer to:

New York Independent System Operator, Inc.  
Docket Nos. EL02-125-000 and EL02-125-001

Dickstein Shapiro Morin & Oshinsky LLP  
Attention: Kenneth M. Simon, Esquire  
Counsel for New York Power Authority  
2101 L Street, N.W.  
Washington, DC 20037

Reference: Settlement Agreement

Dear Mr. Simon:

On June 14, 2004, you submitted a Stipulation and Agreement ("Financial Settlement") for filing with the Commission, on behalf of the New York Power Authority, Consolidated Edison Company of New York, Inc., KeySpan Energy Development Corporation, KeySpan-Ravenswood, LLC, Reliant Resources, Inc., PSEG Power In-City I, LLC and Astoria Energy LLC. A separate Settlement Agreement was filed by the New York Independent System Operator, Inc. contemporaneously with the Stipulation and Agreement. Taken together, the two settlements were intended to resolve all of the issues in this proceeding.

Comments on the Financial Settlement were filed by \_\_\_\_\_. The Financial Settlement is in the public interest and is hereby approved.

The Commission's approval of the Financial Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

This order terminates Docket Nos. EL02-125-000 and EL02-125-001.

Magalie R. Salas  
Secretary

cc: Public File  
All Parties

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

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OFFICE OF THE  
SECRETARY

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FEDERAL ENERGY  
REGULATORY COMMISSION

KeySpan Energy Development Corporation, )  
KeySpan-Ravenswood, LLC, New York )  
Power Authority, Electric Power Supply )  
Association, and Independent Power Producers )  
of New York, Inc., )  
 )  
Complainants, )  
 )  
v. )  
 )  
New York Independent System Operator, Inc., )  
 )  
Respondent. )

ORIGINAL

Docket Nos. EL02-125-000  
EL02-125-001

**Stipulation and Agreement**

**I. Explanatory Statement**

**A. Procedural History**

This *Stipulation and Agreement* ("Financial Settlement") provides for a revised allocation of the cost of system upgrade facilities ("SUFs") in New York City for Class Year 2001 projects.<sup>1</sup> In conjunction with this Financial Settlement, the NYISO will file a

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<sup>1</sup> All capitalized terms, unless otherwise defined herein, shall have the meaning ascribed to them in the Open Access Transmission Tariff ("OATT") of the New York Independent System Operator, Inc. ("NYISO"). "Class Year 2001" refers to the group of electric generating projects subject to the cost allocation procedures at issue in the above-captioned docket.

Settlement Agreement pertaining to non-financial issues raised in the above captioned dockets ("Non-Financial Settlement").<sup>2</sup>

This Financial Settlement arises from litigation in the above-captioned docket relating to a report approved by the NYISO's Operating Committee, entitled *Cost Allocation of New Interconnection Facilities to the New York State Transmission System for the Class Year 2001*, as amended.<sup>3</sup> KeySpan Energy Development Corporation and KeySpan Ravenswood LLC (collectively, "KeySpan"), supported by the New York Power Authority ("NYPA"), appealed the approval of the Cost Allocation Report to the NYISO's Management Committee and then to the NYISO's Board of Directors, each of which denied KeySpan's appeals.

On August 28, 2002, KeySpan, NYPA, the Electric Power Supply Association and the Independent Power Producers of New York, Inc. ("IPPNY"), filed a complaint under Section 206 of the Federal Power Act against the NYISO with the Federal Energy Regulatory Commission (the "Commission"). The complaint alleged that the Cost Allocation Report was inconsistent with the NYISO's OATT. On September 24, 2002, the NYISO answered the complaint and denied the principal allegations therein.

Timely motions to intervene were filed by American National Power Inc., Calpine Eastern Corporation ("Calpine"), Consolidated Edison Company of New York,

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<sup>2</sup> This Financial Settlement may be approved by the Commission on a stand-alone basis and does not require Commission adoption of the Non-Financial Settlement to become effective.

<sup>3</sup> The initial version of the cost allocation report was issued by the NYISO planning staff on May 15, 2002. An *Addendum: First Revised Project Cost Allocation* was issued on July 19, 2002 to reflect changes in the members of Class Year 2001 after the initial report was approved. Collectively, the documents are referred to herein as the "Cost Allocation Report."

Inc. ("Con Edison"), Dynegy Power Marketing, Inc., New York Transmission Owners, the NRG Companies, PSEG Power In-City I, LLC ("IN-CITY"), the Participating Transmission Dependent Utility Systems, and Reliant Resources, Inc. ("Reliant").<sup>4</sup> The Public Service Commission of New York ("NYPSC") filed a notice of intervention and protest on September 24, 2002.<sup>5</sup>

On October 30, 2002, the Commission set the Complaint for hearing, seeking to develop a factual record on: (1) whether the NYISO's selection of generic generating units was consistent with the feasibility criterion in the NYISO's OATT; (2) whether the NYISO's exclusion of certain generating units from the Baseline Assessment in the Cost Allocation Report was consistent with the NYISO's OATT; and (3) whether the most recent PJM model available at the time the studies commenced was used to conduct the Baseline Assessment, and what effects an updated model might produce. *Order Establishing Hearing Procedures*, 101 FERC ¶ 61,099 at 61,368 (2002).

After expedited, but extensive discovery, a hearing involving fifteen witnesses and numerous exhibits, and the filing of briefs by the parties and the Commission's Trial Staff, Judge Jeffie J. Massey issued an *Initial Decision on Hearing Order of October 30, 2002* ("Initial Decision"), 103 FERC ¶ 63,016, on May 8, 2003. Following the filing with the Commission of briefs on and opposing exceptions to the Initial Decision, KeySpan, IPPNY, the NYISO and Con Edison filed a *Motion for Appointment of Settlement Judge* on August 13, 2003. NYPA subsequently filed an answer

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<sup>4</sup> Reliant's affiliate, Astoria Generating Company, L.P. ("Reliant-Astoria") is a member of Class Year 2001.

<sup>5</sup> A Motion to Intervene Out of Time was filed by Mirant Americas Energy Marketing, LP, Mirant New York, Inc., Mirant Bowline, LLC, Mirant Lovett, LLC, and Mirant NY-GEN, LLC (collectively "Mirant") and was denied on December 3, 2002.

to the motion and Con Edison filed a request for leave to reply to NYPA's answer and a reply.

On August 22, 2003, the Commission granted the request for appointment of a settlement judge, 104 FERC ¶ 61,221 (2003), and on August 26, Chief Administrative Law Judge Curtis L. Wagner, Jr. appointed Judge Carmen A. Cintron to be the settlement judge.

**B. Other Developments**

On March 28, 2003, less than three weeks after the close of the hearing described above, Con Edison informed the NYISO that the figures used for SUF costs in the Cost Allocation Report, totaling \$71 million, were understated. Con Edison's revised cost estimate was approximately \$124 million.

Under the NYISO's OATT, actual increases of costs previously allocated to developers that are "not within the control of the connecting Transmission Owner" are to be paid by the developers. NYISO OATT, Attachment S, First Revised Sheet No. 685. Whether the increase in SUF costs for Class Year 2001 projects was beyond Con Edison's control is a matter in dispute among the parties (or as to which parties have not taken a position). Disputes between a developer and a transmission owner about a cost increase are to be "resolved by those two parties in accordance with the terms and conditions of their interconnection agreement." *Id.* at Original Sheet No. 686. Con Edison, however, has not yet entered into interconnection agreements for all of the Class Year 2001 projects, and those interconnection agreements that have been executed do not address the instant cost dispute, but instead refer to the NYISO OATT for resolution of such disputes. Also during this period, the NYISO approved a change in interconnection points for NYPA's Poletti Expansion Project, which is one of the Class

Year 2001 Projects subject to the cost allocation proceeding. During the settlement discussions, however, a concern was raised about the impact of the change in the Poletti Expansion Project's interconnection points because of the combined impact of the Poletti Expansion Project and Reliant's proposed Astoria Project, which is a member of Class Year 2002. This Financial Settlement addresses the revised cost estimates and provides for a resolution of the Poletti Expansion/Astoria interconnection issue.

**C. The Settlement Discussions**

The active participants in the proceeding before Judge Massey –KeySpan, NYPA, IN-CITY, the NYISO, Con Edison, the NYPSC and the Commission's Trial Staff – met with Judge Cintron in person or by conference call on many occasions between September 8, 2003 and May 25, 2004. Two sponsors of Class Year 2001 projects did not participate in the initial settlement conferences – Astoria Energy LLC ("Astoria"), which is not a party to the case in Docket No. EL02-125-000 and Reliant, which is a party to the case but was responsible only for a small amount of the Class Year 2001 cost allocation. At the request of Judge Cintron, however, both Astoria and Reliant joined the settlement negotiations on October 8, 2003 and participated in settlement discussions thereafter. (The Settling Parties are the participants in the settlement negotiations, other than the Commission's Trial Staff, the NYPSC and the NYISO.)

The Settling Parties, the Commission's Trial Staff, the NYPSC and the NYISO separated the issues to be resolved into two categories: Class Year 2001 financial issues (*i.e.*, who pays how much to whom for Class Year 2001 SUFs) and non-financial issues for future cost allocations (*i.e.*, what changes should be made in the cost allocation process and the NYISO's implementation of the process going forward). This Financial



Settlement, which all of the Settling Parties support,<sup>6</sup> resolves all the Class Year 2001 financial issues, including headroom payments. Resolution of non-financial issues for future cost allocations will be presented to NYISO stakeholders who have not participated in the settlement discussions, for review. Thus, non-financial issues are addressed separately.

**D. Standard for Review and Policy and Other Implications**

On October 15, 2003, the Commission issued a *Notice to Public* requiring that each settlement filed with the Commission address “the applicable standard of review, *i.e.*, whether the proceeding is subject to the just and reasonable standard or whether there is *Mobile-Sierra* language making it the standard,” as well as the following additional matters:

1. What are the issues underlying the settlement and what are the major implications;
2. Whether any of the issues raise policy implications;
3. Whether other pending cases may be affected; and
4. Whether the settlement involves issues of first impression, or if there are any previous reversals on the issues involved.

This settlement is subject to review under the “just and reasonable” standard established by Sections 205 and 206 of the Federal Power Act, and not by the public interest standard of the *Mobile-Sierra* doctrine. The Settling Parties’ respective payment responsibilities for the cost of SUFs for Class Year 2001 projects either are not addressed in existing contracts between or among them, or the parties to any such contract mutually agree that the provisions of any such contract are consistent with this

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<sup>6</sup> The Commission’s Trial Staff, the NYPSC and the NYISO may file separate comments on this Financial Settlement.

Financial Settlement. See Section II.C.1 below.<sup>7</sup> Thus the *Mobile-Sierra* doctrine is not applicable to review of this Financial Settlement. The Settling Parties, however, do regard this settlement to be a contract among themselves, and that any unilateral changes to the Financial Settlement would be subject to review under the public interest standard of the *Mobile-Sierra* doctrine.

As to the policy and other implications of this Financial Settlement, there are none. This is a “black box” settlement, not intended to serve as a precedent for use in another proceeding, to implicate prior Commission precedents or to serve as a future Commission precedent. See Section II.C.4, below. While this is the first time the NYISO’s cost allocation process has been applied, no issues of first impression are resolved by this Settlement Agreement because of its “black box” nature. To the knowledge of the Settling Parties, the Commission’s Trial Staff, the NYPSC and the NYISO, there are no pending proceedings that will be affected by this settlement.

## **II. Terms and Conditions of Settlement**

### **A. SUF Cost Allocation**

#### **1. 2001 SUFs.**

This Financial Settlement covers all SUFs constructed or to be constructed in connection with Class Year 2001 projects (“2001 SUFs”).

#### **2. Membership in Class Year 2002**

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<sup>7</sup> Under a Confirmation for Transaction and Master Power Purchase and Sale Agreement dated April 29, 2003, between Astoria and Con Edison (as amended, the “PPA”), Astoria agreed to pay to Con Edison a certain amount in respect of the cost of SUFs and any increases in the cost of SUFs. Astoria and Con Edison hereby agree that the PPA is to be construed as requiring Astoria to pay the share of the cost of SUFs allocated to Astoria in this Financial Settlement.

In addition to its project in Class Year 2001, Reliant is also the sponsor of a project in Class Year 2002. Reliant hereby agrees to withdraw its Class Year 2002 project from Class Year 2002 effective upon Commission approval of this Financial Settlement.<sup>8</sup> That project will be included in Class Year 2003, subject to Reliant's right to withdraw the project from Class Year 2003. In consideration for Reliant's agreement concerning its Class Year 2002 project, Reliant-Astoria will not be allocated SUF costs for Class Year 2001<sup>9</sup>

### 3. Percentage Responsibility up to \$130 Million.

The Settling Parties identified below shall each bear financial responsibility for their respective shares, as set forth next to their names, of the actually incurred cost to Con Edison of constructing, acquiring and making operational the 2001 SUFs, up to a total for all Settling Parties of \$130 million. Amounts in excess of \$130 million for the 2001 SUFs shall be the

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<sup>8</sup> Reliant's decision to withdraw from Class Year 2002 (1) resolves all issues for developers in Class 2001 and developers remaining in Class Year 2002 concerning impacts upon the Astoria West and Queensbridge Substations and (2) permits such developers' respective cost responsibility to be limited, for Class Year 2001, to the amounts set forth in this Financial Settlement, and for Class Year 2002, as provided in the Non-Financial Settlement and this Financial Settlement.

<sup>9</sup> The percentage shares set forth in Section II.A.3, together with the other terms and conditions of this Financial Settlement, reflect the reallocation of Reliant-Astoria's 2001 Class Year SUF cost responsibility to the other 2001 Class Year developers. To the extent Reliant-Astoria has already paid 2001 Class Year SUF costs, the other 2001 Class Year developers will (i) reimburse such amounts to Reliant-Astoria in proportion to the percentage shares set forth in Section II.A.3 on or before the later of 10 days following Commission approval of this Financial Settlement and seven days following Reliant-Astoria's submission to other Class Year developers receipts from Con Edison confirming such payments; and (2) such other developers upon reimbursement of such amounts to Reliant-Astoria shall be considered to have paid such amounts to Con Edison for purposes of satisfying their cost responsibilities under this Financial Settlement. Con Edison shall cooperate in furnishing receipts to Reliant-Astoria.

responsibility of Con Edison irrespective of the reason for, or cause of the cost. The percentage shares for each individual Settling Party identified below are fixed by this Financial Settlement and not subject to change for any reason.

<u>Responsible Party</u>	<u>% Share</u>	<u>Cost @ \$124 million</u>	<u>Cost @ \$130 million</u>
Con Edison, as Transmission Owner	42.840%	\$53,121,600	\$55,692,000
Con Edison, for East River Repowering	26.364%	\$32,691,360	\$34,273,200
NYPA	17.773%	\$22,038,520	\$23,104,900
Astoria	13.023%	\$16,148,520	\$16,929,900
Reliant-Astoria	0.00%	\$0	\$0
TOTAL	100%	\$124,000,000	\$130,000,000

**4. Cost Responsibility if less than \$120 Million.**

If Con Edison constructs, acquires and makes operational the SUFs described on Exhibit A and the total cost of the SUFs is less than \$120 million, the cost of the 2001 SUFs shall be deemed to be \$120 million for purposes of the allocation of cost responsibility set forth herein. In such circumstances, Con Edison shall be reimbursed for the cost of 2001 SUFs hereunder as if the total cost of the 2001 SUFs were \$120 million. If, for any reason, Con Edison does not construct, acquire and make operational all the SUFs described on Exhibit A, the foregoing provisions of this paragraph 4 shall have no effect.

**5. Payment of SUFs**

Commencing with the first month following the date that the Commission approves or accepts or this Financial Settlement, Con Edison shall issue monthly bills to each Class Year 2001 developer for that developer's allocated share of the prior month's

actually incurred SUF costs determined in accordance with this Financial Settlement. Each developer's monthly share of actually incurred SUF costs will be calculated by applying that developer's respective percentage share, as stated in Section II.A.3 above, to the prior month's total of actually incurred SUF costs. The first such monthly bill shall reconcile the total payments made by each developer to the to that developer's respective percentage share of all SUF costs incurred to date.

If the final total of all SUF costs are less than \$120 million and all SUFs described on Exhibit A are constructed, acquired and made operational, Con Edison shall issue a reconciliation bill to each developer for that developer's allocated share of the difference between the actual final total cost of the SUFs and \$120 million.

Payment for all bills are due to Con Edison 30 days after receipt of that bill.

6. Updated Security

Within thirty days after the date that the Commission approves this Financial Settlement, each 2001 Class Year developer shall, if required by the Financial Settlement, increase the financial security posted with Con Edison in accordance with the requirements of Attachment S so that the total financial security posted by each developer is sufficient to secure such developer's total allocated share of the costs of the 2001 SUFs, which shall for this purpose, be deemed \$124 million. Such security shall not exceed the amount of 2001 SUF costs allocated to each developer and shall be reduced dollar-for-dollar, to the extent that each developer has reimbursed or reimburses Con Edison for 2001 SUF costs.

**B. Headroom Allocation**

**1. Headroom Percentage Shares.**

Under the NYISO OATT, if a developer pays for SUFs that result in greater transmission capacity than is required to accommodate all projects in the developer’s Class Year and reliability requirements for the period of the applicable cost allocation assessment, the developer is entitled to “headroom” credits. For the purpose of allocating headroom credits among Class Year 2001 developers which are making SUF payments, each developer identified below shall be entitled to credit for headroom resulting from the 2001 SUFs based on the percentage set forth next to the developer’s name:

Con Edison for East River Repowering	46.1232%
NYPA	31.0934%
Astoria	22.7834%
Reliant	0.00%
TOTAL	100.00%

**2. Headroom Payments<sup>10</sup>**

The NYISO has calculated the headroom reimbursement obligations of the Class Year 2002 developers and has presented those calculations to the Settling Parties.

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<sup>10</sup> Except for references to the Settling Parties, the provisions of this Section are substantially identical to parallel provision in the Non-Financial Settlement, Sections II.B.10 –16. These provisions have been included in the Financial Settlement because they are an essential part of the consideration to the Settling Parties, and would allow the Financial Settlement to be approved on a stand-alone basis if the Non-Financial Settlement is delayed or is ultimately not approved by the Commission.

The Settling Parties agree that the headroom calculations prepared by the NYISO and attached hereto as Exhibit B are accurate and consistent with this Financial Settlement. The NYISO shall account for headroom in accordance with Exhibit B hereto in its report to the Operating Committee on the results of the Class Year 2002 cost allocation studies.

The amounts shown on Exhibit B hereto are based on SUFs for the Class Year 2001 developers of \$124,000,000. If, pursuant to this Financial Settlement, the SUFs costs for the Class Year 2001 developers differ from \$124,000,000, the headroom reimbursements shown on Exhibit B hereto as payable by the Class Year 2002 developers to Class Year 2001 developers shall be modified utilizing the "Developers' Share" shown in Exhibit B hereto. If the total SUF costs for Class Year 2001 developers are less than \$120,000,000 or more than \$130,000,000, the cost of SUFs for the purpose of headroom payment calculations shall be based on the amount the Class Year 2001 developers pay to Con Edison. To the extent such costs cannot be identified to specific SUFs, such costs shall be allocated pro rata to all SUFs paid for by Class Year 2001 developers.

Class Year 2002 developers who accept their project cost allocation shall reimburse the Class Year 2001 developers for headroom pursuant to Attachment S and this Financial Settlement (and the Non-Financial Settlement if made effective by the Commission). The NYISO shall recalculate Class Year 2002 developers' headroom obligations as may be necessary in the event any Class Year 2002 developer rejects its project cost allocation or commits a security posting default.

At the time a Class Year 2002 developer submits its acceptance notice to the NYISO, such developer shall post security for the benefit of each Class Year 2001 developer to whom it is responsible for headroom reimbursement, and in a form

consistent with the requirements of Attachment S for security posting and meeting the commercially reasonable requirements of the Class Year 2001 developer. If the amounts to be paid by the Class Year 2001 developers exceed \$124,000,000, the amount of security for the Class Year 2002 developer shall be increased to reflect their share of the higher amount. The Class Year 2002 developer shall maintain such security until its obligations for headroom payments are satisfied or reduced as provided below.

Class Year 2002 developers shall adjust the amount of the security they post as the NYISO may determine in recalculating their headroom obligations, as described above. Class Year 2002 developers may adjust the amount of the security posted to reflect the headroom payments they make to Class Year 2001 developers.

Class Year 2001 developers seeking reimbursement for headroom from Class Year 2002 developers will be paid when they have paid Con Edison for the SUFs that create the headroom. Class Year 2001 developers shall present copies of invoices for SUF costs received from Con Edison, as well as proof of their payment of those invoices, to the NYISO. The NYISO shall thereafter determine the headroom payments due from Class Year 2002 developers. The NYISO shall provide its calculations to the Class Year 2002 developers who are responsible for the headroom and to the Class Year 2001 developers to whom payment for such headroom is owed. Class Year 2002 developers shall pay the Class Year 2001 developers the amounts calculated by the NYISO within 10 days of the receipt of the NYISO's calculation.

Payments for Class Year 2001 developers' headroom by developers in Class Years 2002 and subsequent class years shall be made in accordance Section II.B.1. and the second paragraph of this Section II.B.2.



The NYISO shall have no liability with respect to (1) the accuracy or correctness of any SUF costs or any invoice sent by Con Edison or Class Year 2001 developer seeking payment for any SUF costs or headroom amounts or (2) the failure of any Class Year 2002 developer to make any headroom payment contemplated under Attachment S and this Financial Settlement.

**C. Additional Provisions**

**1. Complete Agreement**

This Financial Settlement represents the entire agreement among the Settling Parties with respect to the subjects addressed herein, and, with respect to such matters, supercedes 1) the Cost Allocation Report and 2) any prior understanding or agreement by, between or among the parties hereto.

**2. Approval by the Commission**

This Financial Settlement and the Settling Parties' rights and obligations hereunder are conditioned upon approval of this Financial Settlement by the Commission without condition or modification.

**3. Governing Law**

This Financial Settlement shall be construed and interpreted in accordance with the laws of New York State, without reference to principles of conflicts of laws.

**4. No Determination or Admission**

Approval of, agreement to, or acquiescence in this Financial Settlement shall not be deemed in any respect to constitute a determination by the Commission or admission by any Settling Party, the Commission's Trial Staff, the NYPSC or the NYISO that any allegation or contention made in these proceedings is true or valid. In reaching this Financial Settlement, the Settling Parties specifically agree that the Financial

Settlement represents a negotiated agreement for the sole purpose of settling certain issues, as described herein. None of the Commission, any signatory, participant or affiliate of any of the Settling Parties, the Commission's Trial Staff, the NYPSC nor the NYISO shall be deemed to have approved, accepted, agreed to, or consented to any fact, concept, theory, rate methodology, principle or method relating to tariff provisions or other matters underlying or purported to underlie any of the resolution of the issues provided herein. Nor shall this Financial Settlement be deemed to have established a "settled practice," as that term is used in *Public Service Comm'n of New York v. FERC*, 642 F.2d 1335 (D.C. Cir.) (1980), *cert. denied*, 454 U.S. 879 (1981).

#### 5. Confidential Discussions

The discussions and documents exchanged by and among the Settling Parties, the Commission's Trial Staff, the NYPSC and the NYISO that have preceded agreement to the Financial Settlement have been conducted on the understanding that they were undertaken subject to Rule 602(c) of the Commission's Rules of Practice and Procedures, 18 C.F.R. §385.602(c) (1999), and the rights of such entities with respect thereto shall not be impaired by the Settlement.

#### 6. Successors

The rights conferred and obligations imposed on any Settling Party by this Financial Settlement shall inure to the benefit of or be binding on that party's successors in interest and assignees as if such successor or assignee was itself a Settling Party.

#### 7. Further Cooperation

All Settling Parties agree to take any reasonable action (including the submission or support of any filings) required to implement this Financial Settlement.

#### 8. Multiple Counterparts

This Financial Settlement may be executed in multiple counterparts.

**III. Conclusion**


Wherefore, each of the Settling Parties requests that the Commission approve this Financial Settlement.

Respectfully Submitted,

Dated: June 10, 2004

**New York Power Authority**

David E. Blabey  
Executive Vice President, Secretary  
and General Counsel

By:   
New York Power Authority  
123 Main Street  
White Plains, New York 10601-3170

**Consolidated Edison Company of New York, Inc.**

By: \_\_\_\_\_  
Chanoch Lubling  
Vice President, Regulatory Services  
Consolidated Edison Company of New York, Inc.  
4 Irving Place  
Room 1815-S  
New York, N.Y. 10003

This Financial Settlement may be executed in multiple counterparts.

**III. Conclusion**

Wherefore, each of the Settling Parties requests that the Commission approve this Financial Settlement.

Respectfully Submitted,

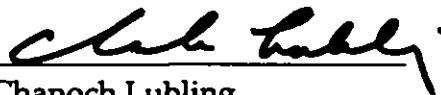
Dated: June 10, 2004

**New York Power Authority**

David E. Blabey  
Executive Vice President, Secretary  
and General Counsel

By: \_\_\_\_\_  
New York Power Authority  
123 Main Street  
White Plains, New York 10601-3170

**Consolidated Edison Company of New York, Inc.**

By:   
Chanoch Lubling  
Vice President, Regulatory Services  
Consolidated Edison Company of New York, Inc.  
4 Irving Place  
Room 1815-S  
New York, N.Y. 10003

**Reliant Energy, Inc.**

By: 

Robert W. Harvey  
Executive Vice President  
Reliant Energy, Inc.  
1000 Main Street  
Houston, TX 77002

**PSEG Power In-City I, LLC**

By: \_\_\_\_\_  
Edward J. Sondey

Vice President - Finance and Development  
PSEG Power LLC  
80 Park Plaza  
Newark, NJ 07102

**KeySpan Energy Development Corporation**

By: \_\_\_\_\_  
Brian McCabe

Vice President  
KeySpan Energy Development Corporation  
15 Park Drive  
Melville, NY 11747

**KeySpan-Ravenswood, LLC**

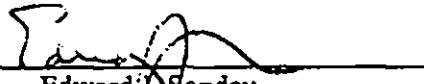
By: \_\_\_\_\_  
Howard A. Kosel, Jr.

President  
KeySpan-Ravenswood, LLC  
One Metro Tech Center  
Brooklyn NY

**Reliant Resources, Inc.**

By: \_\_\_\_\_  
Mark Sudbey  
Senior Vice President  
Reliant Resources, Inc.  
70 West Red Oak Lane  
White Plains, NY 10604

**PSEG Power In-City I, LLC**

By:  \_\_\_\_\_  
Edward J. Sondey  
Vice President Finance and Development  
PSEG Power LLC  
80 Park Plaza  
Newark, NJ 07102

**KeySpan Energy Development Corporation**

By: \_\_\_\_\_  
Brian McCabe  
Vice President  
KeySpan Energy Development Corporation  
15 Park Drive  
Melville, NY 11747

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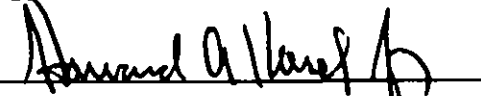
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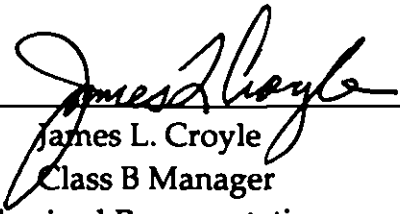
**KeySpan-Ravenswood, LLC**

By:  \_\_\_\_\_

Howard A. Kosel, Jr.  
President  
KeySpan-Ravenswood, LLC  
One Metro Tech Center  
Brooklyn NY




**Astoria Energy LLC**

By:   
James L. Croyle

Class B Manager  
Authorized Representative  
85 Main Street  
Concord, MA 01742

And

By: 

Louis St. Maurice  
Chief Financial Officer  
Astoria Energy LLC  
85 Main Street  
Concord, MA 01742

## **Exhibit A**

### **Class 2001 SUFs**

1. Four 3% (on a 100 MVA base), 345 kV series reactors, one per feeder, in Feeders M51, M52, 71, 72
2. One 5% (on a 100 MVA base), 138 kV series reactor in Feeder 15055. This upgrade includes relocation of Hell Gate 138/13 kV transformer banks 1 & 4.
3. One 138 kV PAR plus one 138 kV series reactor (for a total impedance of 5%, on a 100 MVA base) at Astoria East
4. One 5% (on a 100 MVA base), 138 kV series reactor at Corona
5. Four 138 kV circuit breakers (1E, 7E, 2W, BT) at Astoria East
6. Four 138 kV breakers (F4, F5, F12, BT11-1) at East 13<sup>th</sup> Street
7. Twelve 69 kV breakers (BT5-6, BT5-7, BT7-8, BT51-52, BT61-62, BT71-72, BT81-82, 12, 22, 31, 41, 42) at East River
8. One 138 kV breaker (4S) at Greenwood

**Exhibit B**

**CY01 Settlement – Cost Allocation and Headroom Ownership**

<u>Party</u>	<u>Alloc.%</u>	<u>Alloc.\$</u>	<u>Developers Share%</u>
ConEd/ER	26.364%	32,691,360	46.1232%
NYPA	17.773%	22,038,520	31.0934%
SCS Astoria	13.023%	16,148,520	<u>22.7834%</u>
Total Developer	57.160%	70,878,400	100.0000%
<u>ConEd/TO</u>	<u>42.840%</u>	<u>53,121,600</u>	
Total	100.000%	124,000,000	

<u>CY02 Developers/Projects (1)</u>	<u>Total Reimbursements</u>	<u>To ConEd/ER 46.1232%</u>	<u>To NYPA 31.0934%</u>	<u>To SCS 22.7834%</u>	<u>Total 100.000%</u>
KeySpan Ravenswood	680,543	313,888	211,604	155,051	680,543
NYC Energy Kent Ave	21,657	9,989	6,734	4,934	21,657
Calpine Wawayanda	265,767	122,580	82,636	60,551	265,767
AE Neptune PJM-NYC DC Line	870,139	401,336	270,556	198,247	870,139
Fortistar VP	13,314	6,141	4,140	3,033	13,314
Fortistar VAN	13,314	6,141	4,140	3,033	13,314
PSEG Cross Hudson	<u>4,803,957</u>	<u>2,215,739</u>	<u>1,493,714</u>	<u>1,094,505</u>	<u>4,803,957</u>
Total Payments	6,668,691	3,075,814	2,073,523	1,519,355	6,668,691

**Notes:**

(1) Excluding CY02 Developers/Projects that have a *de minimis* impact, thus no headroom reimbursement obligation.