

Cohen, Dax & Koenig, P.C.

ATTORNEYS

Jeffrey C. Cohen
John W. Dax
Joshua Noah Koenig

90 State Street, Suite 1030
Albany, New York 12207
www.cdkpc.com

Telephone: (518) 432-1002
Facsimile: (518) 432-1028

Paul C. Rapp
David M. Allen
Susan L. Taylor
Jessica A. Norgrove

VIA OVERNIGHT MAIL

July 10, 2002

Mr. Charles King
Secretary of the Management Committee
New York Independent System Operator
5172 Western Turnpike
Altamont, New York 12009

Re: Notice of Appeal of the Keyspan-Ravenswood's 138 kV Alternative SRIS

Dear Mr. King:

Pursuant to Article XV of the Management Committee Bylaws, SEF INDUSTRIES, INC. ("SEF") hereby submits its Notice of Appeal of the Operating Committee's June 27, 2002 Approval of Keyspan-Ravenswood, Inc.'s ("Keyspan") 138 kV Alternative Interconnection Project's System Reliability Impact Study ("SRIS"). As indicated in the attached document, SEF objects to the Operating Committee's conditional approval of Keyspan's SRIS. Keyspan has failed to meet the minimum requirements of an SRIS as established by the NYISO's *SRIS Criteria and Procedures* as approved by the Operating Committee.

Further, SEF requests clarification of the cost allocation consequences of submitting an interconnection proposal that is submitted as a potential replacement of an existing new interconnection project that has already been included in an ongoing cost allocation study. It is SEF's position that Keyspan's alternative interconnection project, if properly conducted and approved, can qualify for the Class of 2003 Cost Allocation Study to be performed by NYISO and cannot be included in either the Class of 2001 study or the Class of 2002 study. Keyspan submitted a petition to modify its Article X certificate

Mr. Charles King
July 10, 2002
Page 2 of 2

with the Article X Siting Board on June 19, 2002, more than 3 months after the March 1 deadline, and Keyspan did not have Operating Committee approval of its alternative SRIS by the Class of 2002 deadline.

Respectfully submitted,



David Allen

DA/jmp
Enclosure

cc: Brian T. McCabe, Keyspan
Steve L. Corey, NYISO (Manager, Transmission Planning)
James V. Mitsche, NYISO (Chairman, TPAS)
Wesley Yeomans, NYISO (Chairman, Operating Committee)
Jerry Montrose, SEF

**NOTICE OF APPEAL OF SEF INDUSTRIES, INC.
FROM THE OPERATING COMMITTEE'S JUNE 27, 2002
APPROVAL OF THE SRIS FOR KEYSpan-RAVENSWOOD, INC.'S
138KV ALTERNATIVE INTERCONNECTION PROJECT**

I. Summary Statement

SEF INDUSTRIES INC. ("SEF") and its affiliates hereby appeal the Operating Committee's June 27, 2002 conditional approval of a System Reliability Impact Study ("SRIS") for the Keyspan-Ravenswood, Inc. ("Keyspan") 138 kV alternative interconnection project. SEF objects to the June 27, 2002 approval of the Keyspan 138 kV alternative interconnection that is contingent upon Keyspan obtaining an amendment of its Article X Certificate and requests that the approval be rescinded pending necessary revisions to, and clarifications of, the SRIS.

Despite outstanding procedural/tariff issues acknowledged by NYISO staff, the Operating Committee has now approved two interconnection projects for Keyspan's Ravenswood expansion: a 345 kV interconnection project, which was incorporated into the Class of 2001 cost allocation study performed by the NYISO staff; and a 138 kV interconnection project proposed by Keyspan in the Spring of 2002. This sets a precedent which SEF believes violates the letter of NYISO procedures, rules, criteria and tariff provisions, as well as the spirit of fair competition within the wholesale electric generation marketplace that FERC has mandated and the NYISO has painstakingly put into action.

SEF, which through its affiliates has ownership interests in three interconnection projects on the NYISO Transmission and Interconnection Study Queue ("Study Queue"), has significant questions with regard to the process by which the 138 kV alternative interconnection study was reviewed and approved as well as whether the study meets the *SRIS Criteria and Procedures* ("SRIS Criteria"). Further study and review are needed to correct the SRIS deficiencies and to clarify whether the new 138 kV alternative interconnection project is a new interconnection and/or represents a material change to Keyspan's previously proposed new interconnection project. As such, the new alternative interconnection project cannot assume the queue position previously established for the Keyspan 345 kV interconnection project.

SEF also requests clarification that Keyspan's new 138 kV alternative interconnection project cannot be included in either the Class of 2001 or 2002 for allocating cost responsibility to interconnection projects since the 138 kV project did not meet the threshold milestone requirements for inclusion in the cost allocation study for either class year.

II. Keyspan's SRIS for the 138 kV Alternative Interconnection Proposal Does Not Comply With the *SRIS Criteria*

Keyspan's alternative 138 kV interconnection study fails to meet the minimum interconnection criteria as provided by the NYISO's *SRIS Criteria*, approved by the Operating Committee July 19, 2000, with revisions approved May 23, 2001. The alternative Keyspan study violates the Study Initiation Requirements set out in the *SRIS Criteria*. To initiate the SRIS study review and approval by the NYISO, Keyspan must confirm and reaffirm its intent to proceed with the proposed project. It is apparent that Keyspan sought NYISO approval of a second alternative interconnection study prior to abandoning its original 345 kV interconnection project and committing to the 138 kV alternative project in question here. The precedent set by the Transmission Planning Advisory Subcommittee ("TPAS") and the Operating Committee is troubling. It is clear from the *SRIS Criteria's Study Initiation Requirements* that Keyspan could not have contemporaneously proceeded with both the primary and alternative interconnection studies because, by definition, it would be unable to manifest a serious intent to proceed with either project. Indeed, prior to the Operating Committee's June 27, 2002 conditional approval in this matter, SEF has no knowledge of another project that has received approval for two separate studies representing a primary and alternative interconnection. To approve the Keyspan alternative interconnection study prior to requiring it to abandon the 345 kV interconnection project currently listed on the NYISO Study Queue is a clear deviation from the *SRIS Criteria*, the past practice of the NYISO and the nondiscriminatory mandate under which the NYISO operates as established by FERC.

Notwithstanding whether the NYISO review of the Keyspan alternative interconnection study was properly initiated under the *SRIS Criteria*, the Keyspan study fails to include the required Baseline Study Assumptions found in the *SRIS Criteria*. The *SRIS Criteria* require that

each project with a proposed in-service date 12 months or more from the date the Operating Committee approves the SRIS Scope for that project shall, at a minimum, assume:

1. All currently existing facilities, within and outside New York State;
2. All proposed interconnections to the NYS Transmission System for which an SRIS, if applicable, has been completed and approved in accordance with the NYISO Agreement, and for which the appropriate State regulatory application (Article X for generation facilities, Article VII

for transmission facilities), if applicable, has been filed and certified as complete, and;

3. All proposed facilities sited outside New York State that have completed an evaluation comparable to the NYISO SRIS, have reached a comparable stage of state regulatory review and that may reasonably be expected to affect the results of the SRIS.

A project that has a

proposed in-service date less than 12 months from the date the Operating Committee approves the SRIS Scope for that project shall, at a minimum, assume:

1) All currently existing facilities, within and outside New York State;

2) All proposed interconnections to the NYS Transmission System with SRIS Scopes approved by the Operating Committee and with proposed in-service dates that are the same or sooner than the project being studied; and

3) All proposed facilities sited outside New York State to the NYISO SRIS with proposed in-service dates that are the same or sooner than the project being studied and that may reasonably be expected to affect the results of the SRIS.

(*SRIS Criteria*, Baseline Study Assumptions, p. 5)

Listed on page 2-3 of the Keyspan alternative study are the new interconnection projects that were input into SRIS. Despite Keyspan conducting its alternative interconnection study in the Spring of 2002, only projects that were included in the “Class of 2001” — projects which had met the regulatory milestones as of May 1, 2001 — were added to the baseline. Keyspan’s study fails to consider other projects listed on the NYISO Study Queue that met the threshold criteria for minimum baseline study assumptions prior to its undertaking the study. One such project that was improperly omitted from the Keyspan SRIS is the NYC ENERGY LLC interconnection project, which, through one of its managing members, is affiliated with SEF. Indeed, it is not clear if Keyspan ever sought Operating Committee approval of its SRIS Scope for its 138 kV alternative interconnection prior to submitting the SRIS for approval. NYC ENERGY (which is not subject to Article X) received approval of its interconnection study on July 12, 2000, and received its Air State Facility permit from the New York State Department of Environmental Conservation on December 19, 2001. The air permit application for the NYC ENERGY facility was noticed complete on August 9, 2000. The omission of this facility, as well as others in the

baseline assumptions, clearly violates the *SRIS Criteria*, and the conditional Operating Committee approval should be rescinded.

III. Keyspan’s 138 kV Alternative Interconnection Project Cannot Assume the Regulatory Queue Status of Its Original 345 kV Interconnection

A. The proposed switch from a 345 kV Interconnection to a 138 kV Interconnection Represents a New Interconnection and/or a Material Change to the Previously Proposed New Interconnection Requiring a New Application and Queue Position

On February 14, 2001, the Operating Committee approved *Criteria for Defining a New Interconnection* (“*New Interconnection Criteria*”) and *Criteria for Defining a Material Change in a Previously Proposed New Interconnection Project* (“*Material Change Criteria*”). The first paragraph of the *New Interconnection Criteria* states: “For purposes of determining whether or not a proposed generation or transmission project is to be deemed a new interconnection project that is obligated to satisfy the queuing and reliability impact study requirements of Section 19B and 19C of the OATT. . .”. Both documents establish whether a reliability impact study must be performed and determine where to place the interconnection project in the NYISO Study Queue relative to all other new interconnection projects being developed. In this instance Keyspan is required to submit a new interconnection study for its alternative 138 kV interconnection that stands separate and apart from the original interconnection study that was approved for the 345 kV interconnection. However, nowhere is the alternative interconnection proposal listed on the Study Queue.

The purposes of defining a material change in a proposed interconnection project are explicitly stated in the *Material Change Criteria*. NYISO criteria establish that when a new interconnection project with an existing queue position undergoes an overall material change, it must be given a new queue position and must initiate a new interconnection study. The factors evaluated to determine whether a change is material are: (i) project size (measured in Megawatts), and (ii) location of interconnection point. The completely different location and different transmission system of the alternative interconnection point establish this proposal as a material change to the Keyspan 345 kV interconnection project listed on the NYISO regulatory

queue. The *Material Change Criteria* states that a “[m]aterial adverse difference is suggested by a materially different system interconnection point, at a voltage level of 115 kV or greater.”

The proposed new interconnection project is so different and unrelated to the previously proposed interconnection that it must be deemed a material change. To find that there is no material change here would vitiate the underlying purposes of the SRIS and interconnection criteria. Further, a decision that a new interconnection point is not a material change cannot be based, in this case, on the conclusions of the 138 kV study since, as mentioned above, the study fails to meet the minimum requirements of the *SRIS Criteria*. Finally, because this alternative interconnection project is in every way unrelated to the 345 kV interconnection project, it should fall under the *New Interconnection Criteria*'s stated presumption of a new interconnection and be subject to all the requirements of sections 19B and 19C of the OATT.

It was not the intent of the *Material Change Criteria* to allow a developer or developers to make sweeping changes to, or otherwise replace, an existing interconnection project to avoid requirements imposed on new interconnection projects. If this were the case, it would be open season for developers seeking to trade or acquire previously established queue positions. Project developers and market speculators would be able to buy interconnection projects that are in an advanced state of regulatory and NYISO review and substitute completely different, albeit 'less adverse,' interconnection projects without penalty. This would come at the expense of a fair and level playing field and the reasonable expectation among all developers of what projects are anticipated to be developed on the transmission system. Further, the technical requirements for those developers seeking to add new generation and transmission projects to the transmission system in the future would become even more murky.

B. The Keyspan 138 kV Alternative Interconnection Project Cannot be a Member of the Class of 2001 or Class of 2002 for Cost Allocation Purposes

It is troubling that the alternative interconnection SRIS approval was made contingent only upon Keyspan obtaining a timely amendment of its Article X certificate. No condition was placed on project approval, nor has the Operating Committee attempted to clarify its rules and criteria, with regard to the status of the Keyspan cost allocation responsibility for its 345 kV project. Apparently, Keyspan is displeased with the NYISO's allocation of cost to its 345 kV

interconnection project and is seeking a way out of this financial burden without any penalty, but at the expense of the other projects in the Classes of 2001 and 2002 as well as other projects on the NYISO Study Queue that continue to pursue NYISO and state regulatory approvals.

Pursuant to its inclusion in the Class of 2001, as set out by the NYISO *Rules to Allocate Responsibility for the Cost of New Interconnection Facilities* (“*Cost Allocation Rules*”), Keyspan must accept its Class of 2001 cost allocation, as approved by the Operating Committee on May 23, 2002, or opt out and be subject to the cost allocation for the Class of 2002. The Article X certification process should have no bearing on the Operating Committee's June 27, 2002 disposition of the 138 kV interconnection study.

SEF requests that the Management Committee find that, if the Keyspan 345 kV interconnection project is abandoned, for cost allocation purposes, the earliest class year in which the new 138 kV alternative interconnection project may be included is the Class of 2003.

SEF also requests that the 345 kV project be deemed abandoned as of the date the Article X certificate is amended to accommodate the new 138 kV project. It is clear to SEF that any other outcome would harm other projects in development from the standpoint of assessing their technical and financial requirements. It is clear from the *Cost Allocation Rules* that an SRIS will be updated and a project included in NYISO’s cost allocation study for a given class year “if the Operating Committee approved the SRIS for the project” before March 1 of that year. *Cost Allocation Rules*, section III.f.5(1). The SRIS for the 138 kV Keyspan interconnection project was not approved until June 27, 2002, at which time the Operating Committee made its approval contingent on a future event. Therefore the 138 kV interconnection cannot be included in the Class Year of 2001 or 2002, which closed as of May 1, 2001 and March 1, 2002, respectively. The earliest possible class year available to the project is therefore the Class of 2003, which does not close until March 1, 2003.

IV. Conclusion

For the foregoing reasons, SEF requests the Management Committee to rule that:

i) the contingent Operating Committee approval of Keyspan's SRIS for its 138 kV interconnection project is rescinded pending corrections by Keyspan to comply with the *SRIS Criteria*;

- ii) the Keyspan 138 kV alternative interconnection project is deemed a new interconnection project and must be independently placed on the NYISO Study Queue to establish its regulatory priority in accordance with NYISO's rules and procedures; and
- iii) the Keyspan 138 kV alternative interconnection project does not qualify for inclusion in the Class of 2001 or 2002 cost allocation studies.

Dated: July 10, 2002
Albany, New York

Respectfully Submitted,

John W. Dax
David Allen
Cohen, Dax & Koenig, P.C.
Attorneys for SEF INDUSTRIES, INC.
90 State Street
Albany, New York 12207
Telephone: (518) 432-1002
Fax: (518) 432-1028