

ORIGINAL

October 30, 2007

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

FILED
OFFICE OF THE
SECRETARY
2007 OCT 30 P 2:14
FEDERAL ENERGY
REGULATORY COMMISSION

Re: KeySpan Ravenswood, LLC v. New York Independent System Operator, Inc.,
Docket No. EL05-17-000, et seq.

Dear Secretary Bose:

Pursuant to Rule 602 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2007), KeySpan-Ravenswood, LLC, Consolidated Edison Company of New York, Inc., New York Power Authority, the New York Independent System Operator, Inc., Consolidated Edison Solutions, Inc., Constellation NewEnergy, Inc. (f/k/a AES NewEnergy, Inc.), KeySpan Energy Services, Inc., Strategic Energy LLC, Hess Corporation, and Econnergy (collectively, "Parties") hereby submit an Offer of Settlement in the captioned proceeding.

The Offer of Settlement is being submitted by the Parties and resolves all the issues raised or that could have been raised in Docket Nos. EL05-17-000, *et seq.* and in connection with the petitions for review filed in the U.S. Court of Appeals for the D.C. Circuit in Case No. 05-1332. The Parties state that this filing contains copies of or references to all documents relevant to this Offer of Settlement. Enclosed with this letter are: (a) an Explanatory Statement, (b) the Offer of Settlement, (c) a Certificate of Service; and (d) a Draft Order.

A copy of this filing is being served on all participants in the referenced proceeding. Pursuant to Rule 602(d)(2), comments on the Offer of Settlement are to be filed on or before November 19, 2007 and reply comments are to be filed on or before November 29, 2007, unless other dates are provided by the Commission.

The Honorable Kimberly D. Bose

October 30, 2007

Page 2

The Parties request that the Commission approve the Offer of Settlement, without modification, as fair, reasonable and in the public interest.

Respectfully submitted,

/s/ James M. D'Andrea

KeySpan – Ravenswood, LLC

James M. D'Andrea

Edwin Kichline

175 East Old Country Road

Hicksville, NY 11801

Email: jdandrea@keyspanenergy.com

ckichline@keyspanenergy.com

Counsel to KeySpan - Ravenswood, LLC

/s/ Anna Chacko

KeySpan Energy Services, Inc.

Anna Chacko

100 E. Old Country Road

Hicksville, NY 11801

Email: achacko@keyspanenergy.com

Counsel to KeySpan Energy Services, Inc.

/s/ Robert E. Fernandez

Robert E Fernandez

New York Independent System Operator,
Inc.

10 Krey Boulevard

Rensselaer, NY 12144

Telephone: (518) 356-6220

Email: rfernandez@nyiso.com

/s/ Paul F. Mapelli

Consolidated Edison Solutions, Inc.

Paul F. Mapelli

701 Westchester Avenue

Suite 300E

White Plains, NY 10604

Email: MapelliP@conedsolutions.com

*Counsel to Consolidated Edison Solutions,
Inc.*

/s/ William F. Young

William F. Young

Hunton & Williams, LLP

1900 K Street, NW

Washington, DC 20006

Telephone: (202) 955-1684

Email: wyoung@hunton.com

*Counsel to New York Independent System
Operator, Inc.*

The Honorable Kimberly D. Bose

October 30, 2007

Page 3

/s/ Jan Fox

Strategic Energy LLC
Jan Fox
General Counsel & VP of Market
Development
Two Gateway Center
Pittsburgh, PA 15222
Email: jfox@strategicenergy.com

/s/ Usher Fogel

Econnergy
Usher Fogel, Esq.
557 Central Avenue, Suite 4A
Cedarhurst, NY 11516
Email: ufogel@aol.com

Counsel to Econnergy

/s/ David O. Dardis

Constellation NewEnergy, Inc.
David O. Dardis
Constellation Energy
111 Market Place
Baltimore, MD 21201
Email: David.Dardis@constellation.com

Counsel to Constellation NewEnergy, Inc.

/s/ Neil H. Butterklee

Consolidated Edison Company of New
York, Inc.
Neil H. Butterklee, Esq.
Consolidated Edison Co. of New York, Inc.
4 Irving Place, Room 1815-s
New York, NY 10003
Email: butterklee@coned.com

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

/s/ Hemant Jain

Hess Corporation
Hemant Jain
Director, Retail Electric Operations
Hess Corporation
One Hess Plaza
Woodbridge, NJ 07095
Email: hjain@hess.com

/s/ Edgar K. Byham

New York Power Authority
Edgar K. Byham, Esq.
New York Power Authority
123 Main Street
White Plains, NY 10601-3170
Email: kim.byham@nypa.gov

Counsel to New York Power Authority

Dated: October 30, 2007

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

KeySpan Ravenswood, LLC)	
v.)	
)	Docket No. EL05-17-000, <i>et seq.</i>
New York Independent System Operator, Inc.)	

EXPLANATORY STATEMENT

Pursuant to Rule 602(c) of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure, 18 CFR § 385.602(c), KeySpan-Ravenswood, LLC (“Ravenswood”), Consolidated Edison Company of New York, Inc. (“Con Edison”), New York Power Authority (“NYPA”), the New York Independent System Operator, Inc. (“NYISO”), Consolidated Edison Solutions, Inc. (“Solutions”), Constellation NewEnergy, Inc. (*f/k/a* AES NewEnergy, Inc.) (“Constellation”), KeySpan Energy Services, Inc. (“KeySpan Services”), Strategic Energy LLC (“Strategic”), Hess Corporation (“Hess”), and Econnergy (individually “Party” and collectively, “Parties”) submit this Explanatory Statement in support of the Offer of Settlement (“Settlement”) in the captioned docket. This Explanatory Statement is not intended to, and does not alter any of the provisions in the Settlement.

The Settlement fully resolves all issues that were raised or could have been raised in Docket No. EL05-17-000, *et seq.* and in connection with the petition for review filed in the U.S. Court of Appeals for the D.C. Circuit in Case No. 05-1332. The Parties request that the Commission approve the Settlement, without modification, as fair, reasonable and in the public interest.

BACKGROUND

On October 27, 2004, Ravenswood filed a complaint against the NYISO. Ravenswood's complaint argued that, for the Summer 2002 Capability Period, NYISO charged its members rates that were not consistent with its filed rate schedules, by failing to comply with NYSRC's Reliability Rules incorporated in three Commission-approved rate schedules. Ravenswood argued that NYISO erroneously computed the amount of ICAP that LSEs were required to acquire for the Summer 2002 Capability Period, based on a failure to accurately translate ICAP requirements into UCAP, the units of capacity used in NYISO's capacity auctions. Ravenswood calculated that it lost about \$23.3 million in sales as a result of NYISO's actions, and sought refunds, plus interest, to redress those losses.

The Commission concluded that the rates charged by NYISO for the Summer 2002 Capability Period conformed with the Commission's prior UCAP orders governing NYISO's ICAP and UCAP requirements, and were consistent with NYISO's then-effective tariffs, rate schedules and manuals. The Commission denied Ravenswood's complaint.

Ravenswood filed requests for rehearing, arguing that the Commission erred in denying its complaint. The Commission rejected those requests.

Ravenswood filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit ("Court"). The Court granted Ravenswood's petition for review and found that the NYISO had violated its tariff. However, the Court

remanded the case back to the Commission for further review and to determine the refund amount, if any.

By its terms, the Settlement resolves all issues that were raised or that could have been raised in Docket No. EL05-17-000, *et seq.* and in connection with the petition for review filed in the U.S. Court of Appeals for the D.C. Circuit in Case No. 05-1332 (“Case No. 05-1332”).

THE OFFER OF SETTLEMENT

In Section One, KeySpan-Ravenswood, LLC accepts, subject to the terms of the Settlement, a one-time payment of \$5,000,000 without interest in full satisfaction of all claims in this docket and Case No. 05-1332.

In Section Two, the Parties agree that the Settlement is conditioned upon payment of the \$5,000,000, being divided among in-City LSEs that served load during the Summer 2002 Capability Period as noted below:

Con Edison	\$4,000,000.00
NYP&A	449,000.00
Solutions	239,000.00
Constellation	184,000.00
KeySpan Services	64,000.00
Econenergy	26,000.00
Strategic	20,000.00
Hess	18,000.00

In Section Three, the Parties agree that the Settlement is conditioned upon KeySpan-Ravenswood, LLC withdrawing the complaint, with prejudice, in Docket No. EL05-17-000 *et seq.* Ravenswood will file a motion withdrawing the complaint within 10 business days of a Final Order (as defined in Section Four of the Settlement Agreement) by the Commission accepting the Settlement without modification.

In Section Four, the Parties provide for the resolution of miscellaneous issues including the effective date of the Settlement, which shall occur upon the issuance by the Commission of a Final Order approving the Settlement without modification or condition. The Parties agree that the Settlement shall not limit or restrict the arguments that the Parties may put forth or the positions that the Parties may take in any future proceeding before FERC, except as to the matters explicitly described herein, and that Parties retain their rights under Sections 205 and 206 of the Federal Power Act.

In Section Five, the Parties agree that this Settlement fully resolves all issues that were raised or that could have been raised by any person, whether or not they are signatories to this Settlement, in Docket No. EL05-17-000 *et seq.*, and in Case No. 05-1332, and that the complaint will be withdrawn, with prejudice, within 10 business days of a Final Order approving the Settlement without modification by the Commission.

INFORMATION REQUIRED BY THE COMMISSION

Issues Underlying The Settlement And The Major Implications

The procedural history of this proceeding and the issues in dispute in this case are described above. The Settlement resolves all issues that were raised or could have been raised in Docket No. EL05-17-000, *et seq.*, and in connection with the petitions for review in Case No. 05-1332, by any person regarding the Commission's orders.

Policy Implications

The Settlement does not raise policy implications.

Whether Other Pending Cases May Be Affected

As described above, the Settlement resolves all issues raised by Parties in Docket No. EL05-17-000, *et seq.*

Whether The Settlement Involves Issues Of First Impression

The Settlement does not involve any issues of first impression.

Whether There Are Any Previous Reversals On The Issues Involved

There are no previous reversals on the issues addressed in the Settlement.

The Standard of Review

The Settlement is subject to the just and reasonable standard.

CONCLUSION

The Parties believe that the Offer of Settlement represents a fair and reasonable resolution of the issues in this proceeding and urge the Commission to approve it without modification expeditiously.

Dated: October 30, 2007

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

KeySpan Ravenswood, LLC)	
v.)	
)	Docket No. EL05-17-000, et seq.
New York Independent System Operator, Inc.)	
)	

OFFER OF SETTLEMENT

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), 18 C.F.R. § 385.602, the noted Parties hereby submit this Offer of Settlement (“Settlement Agreement”), fully resolving all disputed issues in Docket No. EL05-17-000, *et seq.* The Parties are KeySpan-Ravenswood, LLC, Consolidated Edison Company of New York, Inc. (“Con Edison”), New York Power Authority (“NYPA”), the New York Independent System Operator, Inc. (“NYISO”), Consolidated Edison Solutions, Inc. (“Solutions”), Constellation NewEnergy, Inc. (f/k/a AES NewEnergy, Inc.) (“Constellation”), KeySpan Energy Services Inc. (“KeySpan Services”), Strategic Energy LLC (“Strategic”), Hess Corporation (“Hess”), and Econnergy (individually “Party” and collectively “Parties”).

This Settlement Agreement resolves all issues in Docket No. EL05-17-000, *et seq.*, and in connection with the petition for review filed with the U.S. Court of Appeals for the D.C. Circuit, Case No. 05-1332 (“Case No. 05-1332”), by providing, *inter alia*, a total payment of \$5,000,000 to KeySpan-Ravenswood, LLC without interest. As this

Settlement Agreement is fair and reasonable and in the public interest, the Parties urge prompt approval by the Commission without condition or modification.

SECTION ONE

PAYMENT

- 1.1 KeySpan-Ravenswood, LLC accepts, for purposes of settlement, a one-time payment of \$5,000,000, without interest, in full satisfaction of all claims in Docket No. EL05-17-000, *et seq.*, that were raised or could have been raised.
- 1.2 This \$5,000,000 payment is in full satisfaction of all claims that were raised or could have been raised in Docket No. EL05-17 and in return for such payment, KeySpan-Ravenswood, LLC will withdraw the complaint, with prejudice, as noted in Section Three.

SECTION TWO

PAYMENT ALLOCATION

- 2.1 Payment allocation will be made as follows:

Con Edison	\$4,000,000.00
NYPA	449,000.00
Solutions	239,000.00
Constellation	184,000.00
KeySpan Services	64,000.00
Econergy	26,000.00
Strategic	20,000.00
Hess	18,000.00

- 2.2 The Parties agree that the \$5,000,000 payment will be the only payment made under this Settlement Agreement. KeySpan-Ravenswood, LLC will not be entitled to any other additional payment of any kind and no Party will be required to make any other payment.

- 2.3 The NYISO will facilitate such payments using bill adjustments to invoices.
- 2.4 The bill adjustments will be made in the next NYISO billing cycle that follows the withdrawal of the complaint.

SECTION THREE

WITHDRAWAL OF COMPLAINT

- 3.1 KeySpan Ravenswood, LLC will withdraw the complaint, with prejudice, within 10 business days of a Commission Final Order (as defined in section four below) accepting the Settlement Agreement without modification.

SECTION FOUR

GENERAL RESERVATIONS

- 4.1 This Settlement Agreement shall become effective upon issuance by the Commission of a Final Order approving this Settlement Agreement, without modification or condition or, if modified or conditioned, upon its acceptance by all the Parties. If the Commission accepts the Settlement Agreement without modification, no Party will request rehearing or otherwise appeal or support rehearing requests or appeals. For purposes of this Settlement Agreement, a Commission order shall be deemed a Final Order when the last date for filing an application for rehearing with the Commission or a petition for review with the U.S. Court of Appeals has expired and no rehearing application or petition for review is filed by that date. If a petition for review is filed then, for purposes of this Settlement Agreement, a Final Order will be issued on the date when the U.S. Court of Appeals issues its final decision on the merits.

4.2 This Settlement Agreement is an integrated whole and is expressly conditioned on the Commission's acceptance of all provisions herein without change or condition. Notwithstanding the foregoing, if the Commission's approval of this Settlement Agreement is conditioned on the modification of this Settlement Agreement or on any other condition, such modification or condition shall be considered to be accepted unless any Party objecting to such condition or modification files written notice of objection to the Settlement Agreement, as modified or conditioned, with the Commission, and serves such notice on the other Parties within a period of ten days from the date of such Final Order. Should Commission acceptance be subject to condition or modification of the Settlement Agreement, and should Party(ics) object to the conditioning or modification of the Settlement Agreement causing the Settlement Agreement to be withdrawn, the Settlement Agreement shall not constitute any part of the record in this docket and shall not be used for any other purpose.

4.3 For the sole purpose of settling the matters described herein, this Settlement Agreement represents a fair and reasonable negotiated settlement that is in the public interest. The term of this Settlement Agreement shall not limit or restrict the arguments that the Parties may put forth or the positions that the Parties may take in any future proceeding before FERC, except as to the matters explicitly described herein. Nor shall the Parties be deemed to have approved, accepted, agreed, or consented to any concept, theory or principle underlying or supposed to underlie any of the matters provided for herein or to be prejudiced thereby in any

future proceeding except as to the extent relied upon to settle the matters explicitly described herein.

4.4 This Settlement Agreement is made upon the express understanding that it constitutes a negotiated settlement and, except as otherwise expressly provided for herein, no settling Party shall be deemed to have approved, accepted, agreed to, or consented to any principle or policy relating to rate design, rate calculation, or any other matter affecting or relating to any of the rates, charges, classifications, terms, conditions, principles, issues or tariff sheets associated with this Settlement Agreement. This Settlement Agreement shall not be deemed to be a "settled practice" as that term was interpreted and applied in *Public Service Commission of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980), and shall not be the basis for any decision with regard to the burden of proof in any future litigation. This Settlement Agreement shall not be cited as precedent, nor shall it be deemed to bind any settling Party (except as otherwise expressly provided for herein) in any future proceeding, including, but not limited to, any FERC proceeding, except in any proceeding to enforce this Settlement Agreement or in Docket No. EL05-17-000, *et seq.*

4.5 The discussions among the Parties that have produced this Settlement Agreement have been conducted on the explicit understanding, pursuant to Rules 602(e) and 606 of the Commission's Rules of Practice and Procedures, that all offers of settlement and any comments on these offers are privileged and not admissible as evidence against any participant who objects to their admission, and that any

discussion of the Parties with respect to offers of settlement is not subject to discovery or admissible in evidence.

- 4.6 Commission acceptance of this Settlement Agreement shall constitute the requisite waiver of any and all otherwise applicable Commission regulations, to the extent necessary, to permit implementation of the provisions of this Settlement Agreement. This Settlement Agreement constitutes the full and complete agreement of the Parties with respect to the subject matter addressed herein and supersedes all prior negotiations, understandings, and agreements, whether written or oral, between the Parties with respect to the subject matter described herein. Notwithstanding any other agreement or rate schedule, the Parties hereby reserve all rights to which they are entitled under Sections 205 and 206 of the Federal Power Act.
- 4.7 The Settlement Agreement is subject to the just and reasonable standard of review.
- 4.8 Headings in this Settlement Agreement are included for convenience only and are not intended to have any significance in interpretation of this Settlement Agreement.
- 4.9 Signatures may occur by counterparts. Such signatures shall have the same effect as if all signatures were on the same document.

SECTION FIVE

SUPPORT OF FULL SETTLEMENT

5.1 The Parties agree that this Settlement Agreement resolves all issues that were raised or that could have been raised by any person in Docket No. EL05-17-000, *et seq.*, whether or not they are signatories to this Settlement Agreement and in connection with the petitions for review filed in the U.S. Court of Appeals for the D.C. Circuit in Case No. 05-1332.

Respectfully submitted,

/s/ James M. D'Andrea

KeySpan – Ravenswood, LLC

James M. D'Andrea

Edwin Kichline

175 East Old Country Road

Hicksville, NY 11801

Email: jdandrea@keyspanenergy.com

ekichline@keyspanenergy.com

Counsel to KeySpan - Ravenswood, LLC

/s/ Anna Chacko

KeySpan Energy Services, Inc.

Anna Chacko

100 E. Old Country Road

Hicksville, NY 11801

Email: achacko@keyspanenergy.com

Counsel to KeySpan Energy Services, Inc.

/s/ Robert E. Fernandez
Robert E Fernandez
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Telephone: (518) 356-6220
Email: rfernandez@nyiso.com

/s/ Paul F. Mapelli
Consolidated Edison Solutions, Inc.
Paul F. Mapelli
701 Westchester Avenue
Suite 300E
White Plains, NY 10604
Email: MapelliP@conedsolutions.com

*Counsel to Consolidated Edison
Solutions, Inc.*

/s/ William F. Young
William F. Young
Hunton & Williams, LLP
1900 K Street, NW
Washington, DC 20006
Telephone: (202) 955-15
Email: wyoung@hunton.com

*Counsel to New York Independent System
Operator, Inc.*

/s/ Jan Fox
Strategic Energy LLC
Jan Fox
General Counsel & VP of Market
Development
Two Gateway Center
Pittsburgh, PA 15222
Email: jfox@strategicenergy.com

/s/ Usher Fogel
Econnergy
Usher Fogel, Esq.
557 Central Avenue, Suite 4A
Cedarhurst, NY 11516
Email: ufogel@aol.com

Counsel to Econnergy

/s/ David O. Dardis

Constellation NewEnergy, Inc.
David O. Dardis
Constellation Energy
111 Market Place
Baltimore, MD 21201
Email: David.Dardis@constellation.com

Counsel to Constellation NewEnergy, Inc.

/s/ Neil H. Butterklee

Consolidated Edison Company of New
York, Inc.
Neil H. Butterklee, Esq.
Consolidated Edison Co. of New York,
Inc.
4 Irving Place, Room 1815-s
New York, NY 10003
Email: butterkleen@coned.com

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

/s/ Hemant Jain

Hess Corporation
Hemant Jain
Director, Retail Electric Operations
Hess Corporation
One Hess Plaza
Woodbridge, NJ 07095
Email: hjain@hess.com

/s/ Edgar K. Byham

New York Power Authority
Edgar K. Byham, Esq.
New York Power Authority
123 Main Street
White Plains, NY 10601-3170
Email: kim.byham@nypa.gov

Counsel to New York Power Authority

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

_____, 2007

In Reply Refer to:
Docket No. EL05-17-000, *et seq.*

Attn: James M. D'Andrea
On behalf of KeySpan-Ravenswood, LLC

Dear Messrs. _____:

On October 30, 2007, you filed an Offer of Settlement in the above-captioned proceeding among KeySpan Ravenswood, LLC, Consolidated Edison Company of New York, Inc., New York Power Authority ("NYPA"), the New York Independent System Operator, Inc. ("NYISO"), Consolidated Edison Solutions, Inc., Constellation NewEnergy, Inc. (f/k/a AES NewEnergy, Inc.) ("Constellation"), KeySpan Energy Services, Inc., Select Energy, and Econnergy (collectively, the "Parties"). The settlement resolves all issues in the proceedings.

Comments on the Offer of Settlement were due on November 19 2007, and reply comments were due on November 29, 2007. On _____, 2007, Staff and _____ submitted comments in support of the settlement. No other comments were received. On _____, 2007, _____ of the Commission's ADR Staff submitted comments in support of the Settlement Agreement to the Commission.

The Parties state that the settlement is intended to resolve all issues that were raised or could have been raised by all parties in Docket No. EL05-17-000, *et seq.*

The subject settlement is in the public interest and is hereby approved without modification. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

By direction of the Commission.

Secretary

cc: All parties

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Brooklyn, NY, this 30th day of October, 2007.

/s/ Edwin G. Kichline
Edwin G. Kichline