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March 29, 2005

VIA HAND DELIVERY

Hon. John W. Boston
Chairman of the Board
c/o Mr. Mark S. Lynch
President and CEO
New York Independent System Operator, Inc.
3890 Carman Road
Schenectady, New York 12303

Re: Appeal of Management Committee Decision by KeySpan-Ravenswood, LLC

Dear Chairman Boston:

Multiple Intervenors, an unincorporated association of approximately 55 large commercial and industrial energy consumers with manufacturing and other facilities located throughout New York State, hereby submits the original and three copies of its Motion in Opposition to the Appeal by KeySpan-Ravenswood, LLC of the Management Committee's Approval of a Motion Pertaining to Gross Receipts Tax and Direct Customers. A copy of the enclosed Motion in Opposition will be circulated to all members of the Management Committee via electronic mail.

As indicated in our letter dated March 15, 2005, Multiple Intervenors does not request oral argument on the appeals related to the aforementioned Management Committee decision. However, if the NYISO Board elects to conduct oral argument on the issues raised on appeal – either on its own motion or in response to a request by another market participant – then Multiple Intervenors hereby states its desire and intent to participate in such oral argument.

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If you have any questions concerning this filing, please call me at (518) 320-3409.

Very truly yours,

COUCH WHITE, LLP

s/Michael B. Mager

Michael B. Mager

MBM/vaf

Enclosures

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**MOTION OF MULTIPLE INTERVENORS IN OPPOSITION TO
THE APPEAL OF KEYSpan-RAVENSWOOD, LLC
REGARDING THE MANAGEMENT COMMITTEE'S
APPROVAL OF A MOTION PERTAINING TO
GROSS RECEIPTS TAX AND DIRECT CUSTOMERS**

PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of approximately 55 large commercial and industrial energy consumers with manufacturing and other facilities located throughout New York State, hereby submits to the Board of Directors (“Board”) of the New York Independent System Operator, Inc. (“NYISO”) this Motion in Opposition to the appeal by KeySpan-Ravenswood, LLC (“KeySpan”) of the decision by the Management Committee (“MC”) on March 2, 2005 to approve Motion #2, which proposes to address market participant concerns related to gross receipts tax and Direct Customers (hereinafter, the “Motion”).

On March 15, 2005, Multiple Intervenors submitted a Notice of Appeal to the NYISO Board challenging the MC’s decision to approve the Motion. Multiple Intervenors will not repeat the arguments advanced in its appeal here. Rather, the purpose of this submission is to oppose, in part, KeySpan’s appeal of the Motion, which seeks relief that appears materially different from that sought by Multiple Intervenors. For the reasons set forth below, KeySpan’s appeal lacks merit and, to the extent it seeks relief other than the Board’s rejection of the Motion, should be denied.

ARGUMENT

**TO THE EXTENT IT SEEKS RELIEF OTHER THAN
REJECTION OF THE MOTION APPROVED BY THE MC,
KEYSPAN'S APPEAL SHOULD BE DENIED**

In its appeal, KeySpan objects to the Motion approved by the MC, albeit for different reasons than Multiple Intervenors. Although the relief being sought in the appeal is not particularly clear, KeySpan apparently is requesting that the Board either: (a) reject the Motion approved by the MC; or (b) adopt the Motion with "certain clarifications and additional filings." For the reasons stated in its appeal, Multiple Intervenors agrees that the Board should reject the Motion. However, regardless of how the Board rules on the Motion, it should deny the alternative relief sought in KeySpan's appeal.

Initially, KeySpan's appeal contains a series of assertions and legal conclusions, yet it does not contain a single citation to any authority supporting those assertions and conclusions. In many respects, KeySpan's references and conclusions pertaining to transactions that purportedly are "retail" and "wholesale" obfuscate the issues before the Board and need not be acted upon to rule on the appeals from the Motion. Indeed, because KeySpan does not rely on the NYISO's tariff, or provide any definitions of the terms upon which it is relying, it is not clear to what extent, if at all, KeySpan may be challenging the concept of Direct Customers or the appropriateness of transactions that have been occurring regularly in the NYISO's markets since their inception.

In its appeal, KeySpan insinuates that certain transactions "may have been facilitated by the NYISO in error." (See KeySpan at 1.) Multiple Intervenors disputes this

assertion, which is unsubstantiated. To Multiple Intervenors' knowledge and to the extent relevant here, the NYISO has administered its markets in compliance with tariff provisions that were approved by the Federal Energy Regulatory Commission ("FERC"). KeySpan apparently does not agree with certain aspects of the NYISO's existing tariff, but that is no basis for relief.

KeySpan does not discuss or explain explicitly whether it considers transactions involving Direct Customers to constitute retail transactions. However, based on the appeal and the relief sought, it appears that KeySpan may consider such transactions to be retail in nature and/or objects to participating in the same markets as Direct Customers. If that is KeySpan's position, it is wholly inconsistent with the NYISO's FERC-approved tariff and should be rejected.

A Direct Customer is a large end-use consumer that elects to take service directly from the NYISO to supply its own load. In the NYISO's Open Access Transmission Tariff ("OATT"), the term "Load Serving Entity" is defined as "including an entity that takes service directly from the ISO to supply its own load in the NYCA."¹ Importantly, Direct Customers are, pursuant to the NYISO's tariff, participants in the wholesale market.² Direct Customers have been part of the NYISO's markets since their inception and, as

¹ NYISO OATT at § 1.16a.

² See NYISO OATT at § 1.49e (providing in pertinent part that: "A party who purchases Energy, Capacity or Ancillary Services in the Wholesale Market to serve its own Load is considered to be a participant in the Wholesale Market").

acknowledged by the NYISO's General Counsel, transactions involving Direct Customers have been "contemplated by the NYISO's tariffs since they were first developed in 1997."³

KeySpan asserts in its appeal that: "The tariff revisions approved by the Management Committee related to gross receipt taxes imply that Market Participants who purchase energy and transmission related products from the NYISO market but do not intend to resell such energy and transmission related products may do so." (KeySpan at 1.) That is correct. As detailed in the preceding paragraph, however, this practice is authorized by the NYISO's FERC-approved tariff and, with respect to Direct Customers, has been contemplated since 1997 and occurring regularly since the NYISO commenced operations in November 1999.⁴ Moreover, FERC specifically has ruled on at least two occasions that participation by entities comparable to Direct Customers in other electricity markets does not alter the wholesale nature of those markets, nor does it jeopardize an entity's status as an exempt wholesale generator.⁵

KeySpan argues that: "If the NYISO chooses to establish a centralized retail market then Market Participants require assurance that additional filings will be made by the

³ Letter, dated October 7, 2004, from Robert E. Fernandez, Esq. to Glenn Haake, Esq., which was circulated to all market participants.

⁴ In addition to Direct Customers, other entities also purchase certain products from NYISO markets for their own consumption (e.g., a transmission owner that directs a portion of its purchases from NYISO markets to power its own corporate facilities).

⁵ See Multiple Intervenors' appeal at 8; see also Docket No. EL-97-36-000, Southern California Edison Company, 80 FERC ¶ 61,262, Declaratory Order Concerning Sales of Electricity into the California Power Exchange (1997); Docket No. ER04-110-000, Ninety-Ninth Agreement Amending New England Power Pool Agreement, 106 FERC ¶ 61,051, Letter Order (2004).

NYISO such that the centralized retail market is not commingled with its wholesale market and Market Participants are fully aware what market they are participating in.” (KeySpan at 2.) The NYISO does not need to establish “a centralized retail market” – it currently administers wholesale markets which include, among other participants, Direct Customers. Moreover, with respect to market participant awareness, it has been no secret that Direct Customers participate actively in NYISO markets – indicia of such participation can be found in the NYISO’s tariff, on the NYISO’s website, and in discussions in stakeholder committees. The fact that KeySpan may not comprehend fully the markets in which it participates does not mean that the NYISO should modify its markets or alter its tariff in any respect.

CONCLUSION

Although the rationale advanced may differ significantly, Multiple Intervenors agrees with KeySpan that the Board should reject the Motion approved by the MC. Importantly, regardless of how the NYISO rules on Multiple Intervenors’ appeal, KeySpan has failed to justify the “clarifications and additional filings” sought in its appeal, and also has not demonstrated the need to alter the NYISO’s existing tariff in any respect. For the foregoing reasons, to the extent KeySpan’s appeal seeks any relief beyond the rejection of the Motion, it should be denied.

Dated: March 29, 2005

Respectfully submitted,

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s/Michael B. Mager

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