

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

<b>KeySpan Energy Development Corporation,</b>	)	
<b>KeySpan-Ravenswood, LLC, New York</b>	)	
<b>Power Authority, Electric Power Supply</b>	)	
<b>Association, and Independent Power</b>	)	
<b>Producers of New York, Inc.</b>	)	<b>Docket No. EL02-125-000</b>
	)	
<b>v.</b>	)	
	)	
<b>New York Independent System Operator, Inc.</b>	)	

**ANSWER OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.  
TO MOTION OF KEYSpan AND NEW YORK POWER AUTHORITY  
TO ESTABLISH A NEW PROCEDURAL SCHEDULE IN  
CONFORMANCE WITH THE APRIL 1, 2003 INITIAL DECISION DEADLINE**

To:   The Honorable Jeffie J. Massey  
      Presiding Administrative Law Judge

The New York Independent System Operator, Inc. ("NYISO"), by counsel, hereby responds to the Motion of KeySpan and the New York Power Authority (collectively, "KeySpan") to Establish a New Procedural Schedule in Conformance with the April 1, 2003 Initial Decision Deadline recently established by the Chief Administrative Law Judge.

**Background**

On December 3, 2002, the NYISO submitted an emergency motion seeking to modify and extend the original schedule imposed by the Commission in this matter in its Order Establishing Hearing Procedures, filed October 30, 2002 (the "Hearing Order"). In that motion, the NYISO requested a 90-day extension of the overall schedule mandated in the Hearing Order to allow for a more orderly discovery process in light of the voluminous discovery being produced by the NYISO at KeySpan's request, and to provide a minimum of six weeks for the NYISO Staff to prepare an analysis of the effects on the 2001 Cost Allocation, prepared by the

NYISO pursuant to Attachment S of its OATT, of applying a different set of PJM short circuit data than was originally used.

The idea of preparing such an “impact” analysis was proposed by the NYISO in a good faith effort to satisfy the Commission’s requirement, set forth as Issue No. 3 in its Hearing Order, that the Presiding Judge “develop a factual record” as to “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.*” Hearing Order at Ordering Paragraph (A)(3) (emphasis added).

**A. The NYISO Requires a Minimum of Six Weeks to Complete Its Impact Analysis.**

The NYISO has proposed a schedule for this proceeding that allows its staff a six-week period in which to prepare the impact analysis for the Commission's review. KeySpan and NYPA have proposed a schedule whereby NYISO would have less than thirty days in which to conduct this effort. At the same time, Complainants have asked that the Presiding Judge insert a technical conference into the schedule, while also giving Complainants four weeks in which to digest the results. This schedule is both infeasible and unfair to the NYISO.

As noted in the NYISO’s motion to extend the initial decision schedule, the NYISO’s proposal that it conduct an impact analysis followed and was premised upon its determination that, given pending NYISO Staff obligations on other matters, the limited staff resources available to the NYISO, and the approaching holiday season, it would take a minimum of six weeks from initiation to complete an analysis of the effects of the updated PJM short circuit data on the 2001 cost allocation.<sup>1</sup> The schedule contemplated that the parties would review the

---

<sup>1</sup> The NYISO has considered the option of retaining a consultant to assist with the evaluation but has rejected that as likely to take more time rather than less.

NYISO's work product after its completion and conduct any depositions concerning its development at that time.<sup>2</sup>

The NYISO agrees that substantive technical discussions among the parties in advance might clarify the ultimate presentation of the issues to the Presiding Judge and to the Commission. Technical dialogue may also limit the amount of discovery the parties might feel to be necessary. The NYISO has already initiated discussions with KeySpan concerning the identification of the appropriate PJM database as the starting point for the analysis, and has asked both KeySpan and NYPA to consider technical discussions concerning the key assumptions that will need to be applied to that model. However, participating in such interactions, while simultaneously conducting the study, imposes an additional burden on the NYISO staff that is not reflected in the six week time frame the NYISO proposed.<sup>3</sup> Thus, while the NYISO would be happy to undertake that burden in light of its possible benefits to the process, any reduction in the six-week schedule would make it impossible for the staff to complete the analysis with any confidence in the results, and for this reason would not serve the Commission's goal in asking for the development of a record on this point.

In addition, KeySpan is simply wrong when it says that under its proposed schedule NYISO will have “more than 30 days” to complete the impact analysis. Today is already December 12. KeySpan is proposing that a technical conference be convened sometime in

---

<sup>2</sup> The NYISO has already offered to make its work papers and any non-privileged documents related to the impact analysis available to the parties on a rolling basis, rather than hold them for production after completion of the study, thus eliminating the need for document discovery directed to the analysis.

<sup>3</sup> Meaningful technical dialogue requires preparation of meeting materials, participation in the meetings themselves by the very same people who are carrying out the analysis, and time in which to pursue after the meetings any significant issues or questions that are raised.

December (realistically, work on the impact analysis would have to await the outcome of the conference) and that the NYISO submit its analysis by January 10; this is less than four weeks when one takes into account the intervening holidays. Under KeySpan's scheme, the NYISO would have substantially less than 30 days to perform an impact analysis which it unilaterally proposed completing in a tight, but realistic six week timeframe, while KeySpan would gain a full four weeks to review the same analysis, conduct discovery with respect to it, and prepare initial testimony.

Such a schedule would be unfair to the NYISO, and be inconsistent with the basis upon which the Chief Judge extended the initial decision deadline by 60 days. Significantly, KeySpan supported the NYISO's motion for a 90-day extension based on the NYISO's expressed need for no less than six weeks to perform the PJM impact analysis, and KeySpan did not take issue with that request or the reasoning behind it. And nowhere in KeySpan's supporting papers did it assert any need for a four-week interval between submission of the impact analysis and its own initial testimony. Because KeySpan's request is both infeasible and unfair, the Presiding Judge should reject it.

**B. NYISO's Proposed Schedule, Which Calls for a Discovery Cut-Off of January 31, 2003, Except as to Testimony, is Reasonable and Should Be Implemented.**

In contrast, the NYISO's proposed schedule, a copy of which is annexed hereto as Exhibit A, would allow NYISO Staff until January 21, 2003 to submit the PJM impact analysis and is reasonable in all respects. First, the NYISO and KeySpan are close to agreement on the specific PJM short circuit data that will have to be used in the analysis, and nothing prevents KeySpan from conducting its own impact analysis of the same data in the coming weeks. The NYISO has stated its willingness (as set forth in footnote 1 to its proposed schedule) to share all non-privileged work papers and other related documents concerning the impact analysis to

KeySpan on a rolling basis as they are generated. The NYISO's proposed schedule would also provide for a full ten (10) days following submission of the impact analysis for KeySpan to conduct deposition discovery concerning the analysis, with all discovery as to the three issues identified by the Commission in the Hearing Order, except discovery related to testimony,<sup>4</sup> to be concluded by January 31, 2003. Especially given the expedited nature of this proceeding, recognized yet again in the recent Order of the Chief Administrative Law Judge extending the schedule by 60 rather than 90 days, there is no reason -- and KeySpan sets forth none -- why all discovery (except as to testimony, as is customary) should not be completed by January 31, 2003. Discovery commenced on November 13, and the cutoff date proposed by the NYISO represents an additional 30 days beyond what was originally specified in the Presiding Judge's Scheduling Order of November 13, 2002. The NYISO believes that at this point it has provided all the documentary discovery that has been sought. There simply is no justification for discovery, with all its associated expense, to be extended to February 27, 2003.

---

<sup>4</sup> The NYISO has separately proposed that discovery related to testimony be concluded by March 3, 2003. See Exhibit A. Of course, if the parties engage in technical dialogue early in the process, as the NYISO has suggested, it is difficult to see why formal depositions on the conduct of the study would be necessary since the parties will be able to identify in advance the decisions made in the study process with which they disagree.

WHEREFORE, for the foregoing reasons the Presiding Judge should: (1) deny KeySpan's motion; and (2) issue an order implementing the schedule proposed herein by the NYISO, in furtherance of the Chief Administrative Law Judge's Order of December 6, 2002, which extended the Presiding Judge's initial decision deadline by 60 days to April 1, 2003.

Respectfully submitted,

NEW YORK INDEPENDENT  
SYSTEM OPERATOR, INC.

By: /s/ Arnold H. Quint  
Arnold H. Quint  
Counsel for  
New York Independent System  
Operator, Inc.

Robert E. Fernandez, General Counsel and Secretary  
Elisabeth Grisaru, Esquire  
New York Independent System Operator, Inc.  
3890 Carman Road  
Schenectady, NY 12303

Arnold H. Quint  
Hunton & Williams  
1900 K Street, NW  
Washington, DC 20006

Joseph J. Saltarelli  
Hunton & Williams  
200 Park Avenue  
New York, NY 10166

Dated: December 12, 2003

**Docket No. EL02-125-000**  
**Proposed Procedural Schedule**

NYISO submits evaluation of impacts of 2001 PJM Data (Issue No. 3) <sup>5</sup>	January 21, 2003
Discovery Ends on Issue Nos. 1, 2 and 3, except as to Testimony	January 31, 2003
Complainant and Intervenors with Comparable Positions file Initial Testimony and Exhibits	February 4, 2003
NYISO and Intervenors with Comparable Positions file Testimony & Exhibits	February 11, 2003
Staff files Testimony & Exhibits	February 21, 2003
Deadline for Other Intervenors to File Motion for Leave to File Testimony and Exhibits	February 25, 2003
Complainant Files Rebuttal Testimony and Exhibits	February 27, 2003
NYISO files Rebuttal Testimony and Exhibits	February 27, 2003
Discovery Ends as to Testimony	March 3, 2003
All Participants File Proposed Findings of Fact & Conclusions of Law	March 3, 2003
Hearing	March 5-7 2003
Initial Briefs	March 14, 2003
Reply Briefs	March 21, 2003
Initial Decision	April 1, 2003

---

<sup>5</sup> The NYISO will supply work papers and any other non-privileged documents on a continuing basis so as to eliminate the need for separate document production.

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each party designated on the official service list compiled by the Secretary in the above referenced docket, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.2010 (2002).

Dated at Washington, D.C. this 12<sup>th</sup> day of December, 2002.

/s/ Arnold H. Quint

Arnold H. Quint  
Hunton & Williams  
1900 K Street, N.W.  
Washington, D.C. 20006-1109  
(202) 955-1500