

**UNITED STATES OF AMERICA 108 FERC ¶ 63, 012
FEDERAL ENERGY REGULATORY COMMISSION**

KeySpan Energy Development Corp.

Docket Nos. EL02-125-001

CERTIFICATION OF UNCONTESTED SETTLEMENT

(Issued July 26, 2004)

TO THE COMMISSION:

I. INTRODUCTION

1. The Stipulation and Agreement (“Financial Settlement”) and Settlement Agreement (“Agreement”) taken together (“Settlements”), are certified as an uncontested settlement between Astoria Energy, LLC (“Astoria”); Consolidated Edison Company of New York, Inc.; KeySpan Energy Development Corporation; KeySpan-Ravenswood, LLC; New York Power Authority (“NYPA”); PSEG Power In-City I, LLC (“In-City”); and Reliant Resources, Inc. (“Reliant”) with the New York Independent System Operator (“NYISO”) being party only to the Agreement (each a “Party” and collectively the “Financial Parties” and “Agreement Parties”). Acceptance of the uncontested settlement is in the public interest. The settlements resolve all the issues in the proceeding.

II. BACKGROUND

A. Procedural History

2. The Settlements are the product of litigation in the instant case concerning a cost allocation report approved by the NYISO’s Operating Committee. This report was prepared under Attachment S to its Open Access Transmission Tariff (“OATT”).¹ Attachment S established the process for allocating the cost of System Upgrade Facilities

¹ 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”.

(“SUFs”) between transmission owners and developers. Under Attachment S, there is an Annual Baseline Assessment (“ATBA”) process. The ATBA determines the SUF costs for transmission owners. In addition, Attachment S establishes another process called the Annual Transmission Reliability Assessment (“ATRA”). Under this the NYISO considers actual projects which developers anticipate building over the planning period. The NYISO determines the total SUFs costs associated with those projects and the baseline system. The amount of SUFs cost developers will pay is the difference between these two processes. In addition, generic generators are another provision under Attachment S. The generic generators are used in the calculation of ATBA SUF costs, and as such function as the SUF cost allocator between transmission owners and project developers.

3. Under Attachment S, each year after NYISO allocates SUF costs between a transmission owner and those project developers in the particular class year who plan to bring new generation on line, the developers can either accept the allocation and proceed with the project or drop out of the class. In addition, where the SUF equipment has more transmission capacity than the power new class year generation can put into the system, project developers in later years who use that extra capacity must make headroom payments to reimburse developers from the previous class year.

4. KeySpan Energy Development Corporation and KeySpan-Ravenswood, LLC (collectively, “KeySpan”) the NYPA, the Electric Power Supply Association and the Independent Power Producers of New York, Inc. (“IPPNY”) filed a complaint on August 28, 2002 under Section 206 of the Federal Power Act against the NYISO with the Federal Energy Commission (the “Commission”). In the Complaint, it was alleged that the Cost Allocation Report was inconsistent with the NYISO’s Open Access Transmission Tariff (“OATT”).

5. The Commission set the Complaint for hearing on October 30, 2002. The hearing was to focus 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).

6. On May 8, 2003, following discovery and a hearing involving fifteen witnesses and numerous exhibits, Judge Jeffie J. Massey issued an *Initial Decision on Hearing Order of October 30, 2002* (“Initial Decision”), 103 FERC ¶ 63,016 (2003). After briefs were filed with the Commission 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. Shortly thereafter on August 22, 2003, the Commission granted the request for appointment of a settlement judge² and on August 26, 2003 Judge Carmen A. Cintron was designated accordingly.

B. The Settlement Discussions

7. The active participants³ in the hearing met with Judge Cintron in person and via teleconference several times between September 8, 2003 and May 25, 2004. However, two sponsors of Class Year 2001 projects, Astoria and Reliant, were absent from the initial settlement conferences.⁴ Per Judge Cintron's request, on October 8, 2003, both Astoria and Reliant joined in the settlement negotiations and participated in the ensuing negotiations thereafter.

8. The issues were separated into two categories, financial and non-financial then addressed separately. First, the Class Year 2001 financial issues (i.e., who pays how much to whom for Class Year 2001 SUFs), are addressed in the Financial Settlement, which resolves all the Class Year 2001 financial issues, including headroom payments and provides for a resolution of the Poletti Expansion/Astoria interconnection issue. Second, the 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) are discussed in the Settlement Agreement which resolves the non-financial issues for future cost allocations. This agreement resolves the non-financial issues for future cost allocations consistent with the Financial Settlement. The Agreement provides specificity to Attachment S and its Manual.

III. NON-FINANCIAL – SETTLEMENT AGREEMENT

A. Summary

9. Section I of the Agreement provides background materials and a summary. The NYISO agrees to promptly perform the following, upon approval of the Agreement by the Commission: (1) prepare and submit to its Market Participants, in accordance with the Agreement, its tariffs and agreements, and support proposed revisions to the

² *Order Appointing Settlement Judge*, 104 FERC ¶ 61,221 (2003).

³ The participants in the hearing were: KeySpan, NYPA, In-City, the NYISO, Con Edison, the NYPSC and the Commission's Trial Staff.

⁴ The two sponsors of Class Year 2001 that did not participate in the initial conferences are: Astoria and Reliant. Astoria is not a party to the case in Docket No. EL02-125-000. Reliant is a party to the case, but was only responsible for a small portion of the Class year 2001 cost allocation.

Transmission Expansion and Interconnection Manual (“Manual”), as provided in Section II.A.1 of the Agreement, and (2) make a compliance filing with the Commission to amend Attachment S, as set forth in Sections II.A.2 and II.C.2 of the Settlement Agreement.

10. Prior to filing the compliance filing with the Commission, the NYISO will review the proposed compliance filing with its Market Participants as described in Section II.A of the Agreement. The NYISO will submit the revisions to the Commission if a participant to this proceeding alleges that revisions are not consistent with the Agreement.

11. The proposed modifications to the Manual provide greater transparency in the cost allocation process and improve review and input by NYISO Market Participants. The modifications to the Manual specify and describe the models, data bases, study processes and analytical methods the NYISO will utilize pursuant to Attachment S. In addition, a series of training seminars and/or educational forums on topics relevant to the NYISO’s role in the cost allocation process will be developed by the NYISO and Con Edison for the benefit of NYISO staff.

12. The amendments to Attachment S of the OATT address the definition of the existing system for purposes of establishing the study baseline and specify the criteria the NYISO will use in developing alternatives and selecting generic units, when necessary for the completion of the ATBA. The modifications provide for an independent expert to review the feasibility of the proposed generic solutions.

13. A mechanism for resolving the backlog of Developer Projects in the Class Years 2002, 2003 and 2004 has been established in the Agreement. The Agreement contemplates the finalization of the cost allocation for Class Year 2002 based on preliminary results posted by the NYISO in December 2002. In addition, it establishes a separate process for a “Catch Up Class” to address the Class Years succeeding Class Year 2002. As a result of combined treatment of these classes in one allocation the NYISO will be able to become current in its cost allocation process and eliminate the uncertainty facing the Project Developers.

14. Last, the Parties state that, the ALJ’s Initial Decision should be vacated as moot upon approval of the Financial Settlement and this Agreement to remain consistent with the Commission’s decision in *Kern River Gas Transmission Co.*, 70 FERC ¶ 61,072 (1995) and *Florida Power and Light Co.*, 30 FERC ¶ 61,230 (1985).

B. Terms and Conditions of Settlement

15. Under this Section the proposed revisions to the Manual and Attachment S are

described. The NYISO agrees to promptly perform the following upon approval of this Agreement by the Commission: (1) prepare, submit to its Market Participants in accordance with the Settlement Agreement, its tariffs and agreements, and support proposed revisions to the Transmission Expansion and Interconnection Manual (“Manual”) and (2) make a compliance filing with the Commission to amend Attachment S, as set forth in Sections II.A.2 and II.C.2 of this Settlement Agreement.

B. 1. Revisions of NYISO Manual and Attachment S

16. Prior to filing the agreement with the Commission, the NYISO will review the proposed compliance filing with its Market Participants. If a participant to this proceeding alleges that the revisions are not consistent with the Settlement Agreement the participant shall notify the NYISO and other participants of its challenge, in writing, within fifteen (15) days of the Operating Committee’s approval of the Manual revisions.

17. Once notice has been received, the NYISO shall submit the Manual revisions to the Commission for the purpose of having the Commission determine whether the revisions are consistent with the Settlement Agreement. The filing of the above mentioned notice and the Commission’s determination in response shall serve as a replacement of any other review or appeal of the Manual revisions.

B.1.a. Revisions to Manual

18. Section II.A.1 outlines the provisions governing the NYISO Manual revisions submission requirements to/for the Market Participants. Specifically, II.A.1.a discusses the types of models, databases, and analytical methods that must be used for the purposes of its cost allocation studies and further states that, for stakeholder review, a description of the proposed adjacent control area system representation must be presented to Market Participants. Section II.A.1.b provides that NYISO must use the most current databases and models available at the time its use is first required and, in addition, should only be modified during the course of a Class Year if (1) required by Attachment S, the NYISO tariffs, an order of the Commission, or to address an emergency interconnection not subject to the cost allocation process in a prior year and determined by the NYISO to be necessary to satisfy Applicable Reliability Requirements in the first year cost allocation study planning period, or (2) to correct material errors in the databases and models.

19. The revisions to the Manual, per Section II.A.1.c, must also include provisions to make the activities of the Transmission Planning Advisory Subcommittee (“TPAS”) have more involvement of Market Participants. The amendments mentioned include allowing posting of TPAS meeting minutes, establishment of a Market Participation Working Group within TPAS to focus on each Class Year cost allocation, and requirements for various submissions and presentations for TPAS Working Group review. Section

II.A.1.d requires the NYISO to compile the TPAS Working Group's records and NYISO's responses and make the information available to the Operating Committee with the cost allocation report for each Class Year allocation, with Section II.A.1.e detailing which comments and information should be considered by the NYISO.⁵

B.1.b. Amendments to Attachment S

20. Section II.A.2.a discusses the compliance filing the NYISO shall prepare to implement the amendments to Attachment S to address the definition of the existing system and the selection of generic solutions for purposes of the cost allocation studies. Particularly, the section describes with specificity the facilities to be included in the ATBA and ATRA. Section II.A.2.b establishes how NYISO is to select generic solutions if such are needed to complete the ATBA. In addition, the NYISO shall be responsible for determining whether generic solutions meet reliability requirements. Section II.A.2.c. The Agreement also provides that Market Participants may also propose generic solutions for inclusion in the ATBA. Section II.A.2.f.

21. The Developers and Transmission Owners shall provide the NYISO with all the information needed to make the determinations considered by Attachment S, as amended pursuant to the Settlement Agreement.

B.2. Provisions for the Resumption of the Process

22. In its compliance filing, the NYISO shall also include, in addition to the amendments discussed above, further amendments to its tariffs that will provide for the resumption of the cost allocation process in accordance with the provisions in this section. The NYISO shall apply Attachment S and the Manual as amended and revised. The initial cost allocation, with some exceptions, shall determine the SUFs required for the reliable interconnection of all Developer projects that have met the milestones identified in specific sections of Attachment S on or before the Study Start Date. The NYISO shall prepare an ATRA with respect to these Developer projects as a single class (the "Catch Up Class Year"). The following shall be excluded from the Catch Up Class

⁵ The NYISO shall not consider comments of Market Participants that have not been submitted to TPAS, or the TPAS Working Group nor rely on or use any information not disclosed to TPAS or the TPAS Working Group at least 3 days prior to any TPAS, or TPAS Working Group meeting. However nothing in paragraph (c) in Section II.A.1 shall prevent NYISO from considering or utilizing information that qualifies as Confidential Information under the NYISO's tariffs or that constitutes Critical Energy Infrastructure Information pursuant to any law or regulation.

Year (1) Class Year 2001 Developer projects that have accepted their Project Cost Allocation prior to the Study Start Date, or (2) Class Year 2002 Developer Projects that have accepted their Project Cost Allocation pursuant to the terms of this Settlement Agreement. The NYISO shall resume annual cost allocations for individual Class Years in compliance with the time frames established in Attachment S once all Developers in the Catch Up Class Year have either accepted their Project Cost Allocation or dropped out of the class. II.B.5. The NYISO calculated the Headroom reimbursement obligations of the Class Year 2002 Developers it presented the calculations to the Active Parties. The Class Year 2001 and 2002 Developers parties to this proceeding agree that the calculations, attached as Appendix A, are accurate and consistent with the Financial Settlement. In addition, the NYISO shall account for Headroom in its report to the Operating Committee on the results of the Class Year 2002 cost allocation studies in conformity with Appendix A. II.B.10.

C. Additional Provisions

23. Nothing in this Settlement Agreement limits the NYISO's discretion to seek amendments to Attachment S through the governance process established by the NYISO tariffs or to modify Attachment S or any other tariff provision through compliance filings as may be directed by the Commission.
24. The amendments to Attachment S and to the Manual will apply to the Catch Up Class Year and subsequent cost allocation class years. If necessary, the NYISO will request waivers of the Commission notice requirements. The NYISO will take all steps necessary to make the cost allocation process transparent and open to review and input by all Market Participants to ensure that all of the NYISO's decisions concerning the development of the ATBA and ATRA are fair.
25. Con Edison and the NYISO shall collaborate to develop topics for training seminars and/or educational forums for the benefit of the staff of the NYISO which will begin no later than six months after this Settlement Agreement is approved or accepted by the Commission.
26. Upon approval of the Financial Settlement and this Settlement Agreement, Judge Massey's Initial Decision in this docket shall be vacated as moot.
27. This Settlement Agreement is conditioned upon its approval by the Commission without condition or modification. In no way shall the approval of, agreement to, or acquiescence in this Settlement Agreement be deemed to constitute a determination by the Commission, or admission by any signatory, that any allegation or contention made in these proceedings is true or valid. The signatories submit that this Settlement represents a proposal for the sole purpose of settling certain issues, as described in this Settlement

Agreement.

28. The signatories shall not 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 resolutions of the issues provided herein. Nor shall this Settlement Agreement 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).

29. The NYISO shall address in its stakeholder process, within 90 days after the Commission approves or accepts this Settlement Agreement, other issues relating to Attachment S.

D. Conclusion

30. The signatories request that the Commission approve this Settlement together with the Financial Settlement, which will resolve all of the issues in this proceeding.

IV. FINANCIAL SETTLEMENT

A. Additional Background

31. After the hearing Con Edison informed the NYISO that the figures used for SUFs in the cost Allocation Report, totaling \$71 million, were understated. In addition, the NYISO approved a change in the interconnection point for NYPA's Poletti Expansion Project, a Class Year 2001 Project subject to the cost allocation proceeding. The impact of this project on Reliant's Astoria project a Class Year 2002 Project, was of concern during the negotiations.

B. Summary of Terms

32. The Financial Settlement covers all SUFs constructed or to be constructed in connection with Class year 2001 projects ("2001 SUFs"). Reliant agrees to withdraw its Class Year 2002 project from Class Year 2002 upon Commission approval of this Financial Settlement and, instead, have the project included in Class Year 2003, subject to Reliant's right to withdraw the project from Class Year 2003. Reliant-Astoria will not be allocated SUF costs for Class Year 2001 in consideration for Reliant's agreement regarding its Class Year 2002 projects.

33. Each of the Settling Parties shall bear financial responsibility for their respective shares of Con Edison's actual cost, up to \$130 million, incurred in constructing, acquiring and making the 2001 SUFs operational, with Con Edison bearing the additional costs in

excess of \$130 million. The percentage shares for each Settling Party are shown in detail in Section II.A.3 of this Financial Settlement.

34. If Con Edison constructs, acquires and makes operational the SUFs explained in Exhibit A, for a total cost of less than \$120 million for purposes of the allocation of cost responsibility the costs shall be deemed to be this amount even if the actual cost is less than \$120 million. In that instance, Con Edison shall be reimbursed as if the total cost of the 2001 SUFs were \$120 million. However, if Con Edison does not construct, acquire and make operational all SUFs detailed in Exhibit A for any reason, the foregoing provisions of this paragraph 4 shall have no effect.

35. 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 STET costs beginning the first month after the Commission approves this Financial Settlement.

36. If required by the Financial Settlement, each 2001 Class Year Developer shall increase the financial security posted in accordance with Attachment S within thirty days after the Commission approves this Settlement Agreement.

37. Pursuant to the NYISO's OATT, a developer is entitled to "headroom" credits for amounts paid for SUFs that yielded greater transmission capacity than is required for all projects in the developer's Class Year and reliability requirements for the period of the applicable cost allocation assessment. As specified in the table in this Section, each Class Year 2001 developer listed shall be entitled to a credit for headroom resulting from the 2001 SUFs allocated based on the appropriate percentages next to the developer's name.

38. The NYISO calculated headroom reimbursement obligations of the Class Year 2002 Developers have been presented to the Settling Parties who agree that the calculations, attached to the Financial Settlement as Exhibit B, are accurate and consistent with the Financial Settlement. In its report to the Operating Committee on the results of the Class Year 2002 allocation studies, the NYISO shall account for headroom in accordance with Exhibit B.

39. The amounts shown on Exhibit B are based on SUFs for the Class Year 2001 developers costs of \$124,000,000. If, the SUFs costs for the Class Year 2001 developers do not equal \$124,000,000, then the headroom amounts to be reimbursed to the Class Year 2001 Developers by the Class Year 2002 Developers listed on Exhibit B shall be modified utilizing the "Developers' Share" shown in Exhibit B. If the total SLIT costs for Class Year 2001 developers are less than \$120,000,000 or more than \$130,000,000, the SLIT costs used to calculate headroom payments shall be based on the amount the Class Year 2001 developers pay to Con Edison. If these costs cannot be

traced to specific SUFs, such costs shall be allocated pro rata to all SLITs paid for by Class Year 2001 developers.

40. The Financial Settlement contains in the additional provisions section general clauses typical of settlement agreements.

V. INITIAL COMMENTS

A. Non- Financial – Settlement Agreement

41. The Commission Staff (“Staff”), in its Initial Comments filed July 2, 2004, stated that it supports the Settlement Agreement, except in one respect. Staff opposes vacatur⁶ of the initial decision⁷ rendered by Judge Massey in this proceeding on the ground that it is highly inappropriate under the circumstances in this case.⁸

42. Moreover, Staff believes that, given the otherwise commendable Settlement Agreement, the Commission does not have to reach a determination of the merits of the administrative appeal of the Initial Decision which appeal was brought by NYISO and Con Edison when they filed their briefs on exceptions.⁹ As suggested by Staff, the administrative appeal could be dismissed as moot with the caveat that if any of the changes to the NYISO Manual and Attachment S described in the Settlement Agreement are rejected by the NYISO after they are reviewed with NYISO’s stakeholders, the NYISO should inform both the participants and the Commission and the administrative appeal should be reinstated at once. If not, there would be no correction to the Attachment S procedures were found lacking in the Initial Decision.

B. Financial - Stipulation and Agreement

43. Staff filed Initial Comments on July 2, 2004, wherein it stated that it strongly

⁶ Settlement Agreement at p. 20.

⁷ KeySpan Energy Development Corporation et al., v. New York Independent System Operator, Inc., 103 FERC ¶ 63,016 (2003) (“Initial Decision”).

⁸ The Commission’s trial staff is a participant, not a party, to hearing proceedings. *See* Rule 102(b)(2), 18 C.F.R. §385.102(b)(2) (2004). Accordingly, pursuant to Rule 602(g) and (h), the instant Settlement is uncontested, notwithstanding Staff’s objection, as no party to this proceeding has objected to the Settlement. *See* 18 C.F.R. § 385.602(g)-(h) (2004).

⁹ Con Edison did not accuse the Presiding Judge of Bias. Commission Staff’s Comments On Settlement Agreement at p.3.

supports the Financial Settlement as long as the Commission approves the non-financial settlement as per Staff's comments.

VI. REPLY COMMENTS

44. Reply comments were filed by the NYISO arguing that the Initial Decision should be vacated because no immediate purpose would be served by addressing the specific findings of the initial decision at this time. The NYISO is faced with an adverse ruling whose findings will be reviewed by the Commission if it approves the settlement. However, the parties agreed that the decision should be vacated. According to the NYISO, vacating the decision is consistent with prior Commission policy. The NYPA also filed reply comments in favor of approval of the settlement and disagreeing with Staff's position.

VII. DISCUSSION AND CONCLUSION

45. The Settlements provide a reasonable resolution of the issues set for hearing in this proceeding that is acceptable to all parties. Approval of the Settlements will allow the NYISO to resume the cost allocation process. Thus, approval will eliminate the current uncertainty for developers. Moreover, the Settlements provide beneficial revisions to Schedule S and its Manual which removes uncertainty in the process. Approval will terminate the litigation in this proceeding. The procedural clarifications and tariff amendments proposed in the Agreement enhance the fair and independent administration of the cost allocation process in New York, removing issues that arose out of the NYISO's first attempt to implement its cost allocation rules. The parties agreed that the Initial Decision should be vacated. There are sound policy considerations in favor of vacating the Initial Decision. In the past the Commission has utilized this remedy. Under the circumstances of this case it would seem appropriate to vacate the Initial Decision.

46. The parties stated that the Settlements are subject to the just and reasonable standard of review of Sections 205 and 206 of the Federal Power Act, since changes to the OATT and the Manual can be modified under the governance provisions of the NYISO. The issues of first impression involve the interrelationship of the NYISO and its Market Participants. No other proceedings will be affected by this proceeding. There are policy implications with the Agreement's language where the parties stipulated that the Initial Decision should be vacated.

47. Approval of the Settlements will avoid additional costly litigation, promote administrative efficiency and is in the public interest.

VIII. CERTIFICATION

48. Pursuant to 18 C.F.R. Section 385.602(g)(1), the following are certified for the Commission's consideration:

a) The Settlement Agreement between the New York Independent System Operator, Inc., Astoria Energy LLC, Consolidated Edison Company of New York, Inc. KeySpan Energy Development Corporation, KeySpan-Ravenswood, LLC, New York Power Authority, PSEG Power In-City I, LLC, and Reliant Resources filed on June 14, 2004;

b) Stipulation and Agreement among 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, LLC and Astoria Energy LLC filed on June 14, 2004;

c) Staff's Initial Comments filed on July 2, 2004;

d) Reply Comments of New York Independent System Operator, Inc filed on July 14, 2004;

e) Reply Comments of the New York Independent System Operator, Inc. filed on July 14, 2004.

f) All pleadings, orders, and other documents of record in this proceeding;
and

g) Attached Draft Letter Orders.

Carmen A. Cintron
Settlement Judge

DRAFT

**FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426**

**In Reply Refer To:
Docket No. EL02-125-001**

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

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. The two settlements resolve all the issues between the parties. Comments were filed by Commission Staff on July 2, 2004. Reply comments were filed by the New York Independent System Operator and New York Power Authority on July 14, 2004. On July 26, 2004 the Settlement Judge certified the uncontested settlement to the Commission.

The settlement is in the public interest and is approved. The Commission’s approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of Section 206 of the Federal Power Act, 16 U.S.C. Section 824e (2000).

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

By direction of the Commission.

Docket# EL02-125-001

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Secretary

cc: All Parties
New York Public Service Commission
3 Empire State Plaza
Albany, New York 12223-1350

DRAFT

**FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426**

**In Reply Refer To:
Docket No. EL02-125-001**

Hunton & Williams LLP
Attn: Arnold H. Quint, Esquire
Counsel for the New York Independent System Operator, Inc.
1900 K Street, N.W., Suite 1200
Washington, D.C. 20006-1109

Dear Mr. Quint:

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. The two settlements resolve all the issues between the parties. Comments were filed by Commission Staff on July 2, 2004. Reply comments were filed by the New York Independent System Operator and New York Power Authority on July 14, 2004. On July 26, 2004 the Settlement Judge certified the uncontested settlement to the Commission.

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Docket# EL02-125-001

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By direction of the Commission.

Secretary

cc: All Parties
New York Public Service Commission
3 Empire State Plaza
Albany, New York 12223-1350