

**KEYSPAN-RAVENSWOOD, INC.'s REQUEST
FOR A STAY OF THE APPROVAL OF THE COST
ALLOCATION REPORT FOR THE CLASS OF
2001 BY THE OPERATING COMMITTEE**

Pursuant to Section 5.07 of the New York Independent System Operator (“NYISO”) Agreement and Section 3.01 of the Procedural Rules for Appeals to the Board of Directors of the NYISO, KeySpan-Ravenswood, Inc. (“Ravenswood”) requests a stay of the allocation of the cost of system upgrade facilities to proposed generation projects in the Class of 2001, as approved by the Operating Committee on May 23, 2002 (“Cost Allocation Report”).¹ Ravenswood appealed the Operating Committee’s approval of the Cost Allocation Report on May 30, 2002 to the Management Committee. On June 19, 2002, the Management Committee failed to reverse the action of the Operating Committee. Thus, on June 20, 2002, contemporaneous with filing this request for a stay, Ravenswood has filed an appeal (“Appeal”) to the NYISO Board of Directors (“Board”) of the Management Committee’s decision.

Attachment S to the NYISO’s Open Access Transmission Tariff provides that the Operating Committee’s approval of the Cost Allocation Report starts a 30-day time period, at the end of which each sponsor of a Class of 2001 project must notify the NYISO whether such sponsor will accept or reject the Project Cost Allocation identified in the Cost Allocation Report.² Each sponsor that accepts its allocation will also have to post financial security.

According to a notice provided to market participants by the NYISO, the 30-day period will

¹ Members of the Class of 2001 were allocated approximately \$60 million of system upgrade facility costs on Consolidated Edison Company of New York, Inc.’s (“Con Edison”) system while Con Edison was only allocated just over \$10 million as the transmission owner. Ravenswood was allocated \$11.44 million. This allocation could increase if one or more other members of the Class of 2001 does not accept its allocated share of costs. In the event one or more Class members is removed from the Class, Attachment S provides for recalculation of the total cost of system upgrade facilities and reallocation of the new amount to the remaining members.

² NYISO Attachment S, Tariff Sheet No. 680.

expire on July 5, 2002.³ A stay from the Board extending the period for Ravenswood and other members of the Class of 2001 to make their initial determination to accept or reject the cost allocation is required in order to permit the Board to consider Ravenswood's Appeal of the Management Committee's decision before developers are required to make financial commitments based on the Cost Allocation Report that is the subject of the Appeal. Therefore, Ravenswood requests a stay of the expiration of the 30-day period pending its appeal to the Board. Such stay should, at a minimum, extend through the tenth day following public notice of the Board's decision.

The expiration of the 30-day time deadline prior to the resolution of the Appeal will irreparably harm Ravenswood, other sponsors of projects that are members of the Class of 2001, future class years and the market generally. Absent a stay, Ravenswood is faced with making a choice by July 5, 2002 between (1) accepting a cost allocation that may make its proposed project uneconomic and thus infeasible, based upon the hope that the Appeal will be successful and (2) declining to accept the cost allocation and canceling or delaying its project. For a relatively small project such as Ravenswood's 250 MW upgrade, the addition of the \$11.44 million of system upgrade facility costs is a significant addition of cost and may make the project economically infeasible. With respect to the first option, a developer will likely cancel or delay a project rather rely on a hope of success on appeal. Although a developer could theoretically commit to a cost allocation that renders its project uneconomic based upon a gamble that it will prevail in its appeal, in reality a developer will have no choice but to reject the allocation and take the second option. A developer cannot risk committing to a high cost allocation in hopes of the Cost

³ This time period is larger than 30 days as a result of the tolling effect of a stay issued by the Management Committee's Stay Review Committee.

Allocation Report and the resulting Cost Allocations being revised on appeal. To do so would be speculative and introduce another risk that developers cannot support in the current markets.

Similarly, Ravenswood will be harmed if it rejects its cost allocation and cancels or delays a project. Such a decision cannot be compensated by money. Even if the cost allocation is eventually reduced as a result of an appeal, with the result that the project would have been viable under the revised cost allocation, the developer would have already rejected its cost allocation and can do nothing but seek an interconnection cost allocation as part of some future Class Year. Essentially, the developer was led to believe its project was uneconomic based on erroneous cost allocation data when in fact it was economic to proceed with the project. This harms the developer in that its project was needlessly cancelled or delayed resulting in financial losses of the money.

Ravenswood and other developers would make different decisions if the Cost Allocation is revised as the result of the Appeal. Forcing developers to make financial commitments and decisions before the cost allocation is determined to be final introduces uncertainty to developers and the market, especially under current financial conditions. Developers cannot make informed financial commitments if a component of the commitment is in doubt (i.e. the amount of costs to be allocated to developers). This uncertainty is not beneficial to the market. If the NYISO does not resolve the applicable rules concerning cost allocation before requiring developers to commit to accept the allocation, the market because much needed new supply will be needlessly delayed or cancelled.

The payment of money damages will not compensate Ravenswood, developers or the market for the needless delay or cancellation of development projects. Even if the cost allocation is reduced, the risk of accepting an allocation that makes its project uneconomic will force developers to reject the allocation, as described above. Moreover, it is not clear that the NYISO

is capable of responding in damages, even if it were determined that the cost allocation should be revised. The NYISO Agreement provides that the NYISO shall not be liable to a market participant for any damages resulting from any act or omission in any way associated with the NYISO Agreement, except in the event that the NYISO is found liable for gross negligence or intentional misconduct, and even in such case the NYISO shall not be liable for consequential and indirect damages, among others.⁴ Accordingly, there appears to be no remedy.

Granting Ravenswood's stay request will not irreparably harm other market participants. A short stay of the date to accept or reject cost allocations, as requested here, will not cause any other party to incur irreparable damages. To the contrary, granting the stay while the appeal is pending should provide developers with a benefit. All Class Year 2001 developers now know what their cost allocation is. Projects that are economic assuming such cost allocation will continue to proceed regardless. However, Ravenswood's Appeal will provide projects that are marginal or uneconomic under the current Cost Allocation Report the necessary information required to make a decision. To force these projects to make a decision based on potentially incorrect cost assumptions could cause otherwise economic projects to be delayed. As to members of later Class Years, the issues that Ravenswood is raising on its Appeal will affect those developers as well. Moreover, those developers may well be asked to contribute to the allocation of costs to the Class of 2001 members, as a result of the way that headroom is treated. While the NYISO has already delayed cost allocations for members of the Class of 2001, the limited stay necessary to obtain a final decision with respect to the applicable rules and resulting cost allocation will benefit other parties by providing the basis for making informed decisions.

⁴ NYISO Agreement, Section 25.01. While the provision also indicates that services provided under the NYISO's Open Access Transmission Tariff ("OATT") will be governed by provisions of the OATT, there do not appear to be any specific provisions in the OATT that limit or affect the limitation on liability established in the NYISO Agreement.

A copy of Ravenswood's Notice of Appeal is attached to this Request as Exhibit "A."

CONCLUSION

Ravenswood respectfully submits that it, other developers and the market will be irreparably harmed if the cost allocation for the Class of 2001 projects is allowed to continue while Ravenswood's Appeal is pending. Ravenswood requests that, in the event that the Board stays the time period for project sponsors to elect to accept or reject their Project Cost Allocation, such stay run through the tenth day following public notice of the Board's action.

Dated: June 20, 2002

Respectfully submitted,

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