

January 27, 2009

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

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 Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), 18 C.F.R. § 385.602, Reliant Energy, Inc. (“Reliant”), Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, Oswego Harbor Power LLC, and NRG Power Marketing, LLC (“NRG PML”) (collectively, the “NRG Companies”), Dynegy Power Marketing, Inc., Dynegy Northeast Generation, Inc. (collectively “Dynegy”) (Reliant, NRG Companies, and Dynegy are referred to herein individually as a “Settling Supplier” and collectively referred to herein as the “Settling Suppliers”), Consolidated Edison Company of New York, Inc. (“Con Edison”), Orange and Rockland Utilities, Inc. (“O&R”), Central Hudson Gas & Electric Corporation (“Central Hudson”), New York State Electric & Gas Corporation (“NYSEG”), Rochester Gas and Electric Corporation (“RG&E”), Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”), Long Island Power Authority (“LIPA”), New York Power Authority (“NYPA”) (collectively “New York Transmission Owners”), the New York Independent System Operator, Inc. (“NYISO”), Consolidated Edison Solutions, Inc. (“Solutions”), Constellation NewEnergy, Inc. (“Constellation”) and Gateway Energy Services Corporation (“Gateway”) (Con Edison, O&R, Central Hudson, NYSEG, RG&E, National Grid, LIPA, NYPA, NYISO, Solutions,

Constellation, Gateway and the Settling Suppliers are referred to herein individually as a “Settling Party” and collectively as the “Settling Parties”) hereby submit this Offer of Settlement.

This Offer of Settlement is being submitted as a final resolution of all issues that were raised, or could have been raised, in Docket No. EL05-17-000, *et seq* including “any damages New York generators, other than Ravenswood, suffered as a result of NYISO's violation of the filed rate doctrine, including whether and how the violation affected the amount of capacity the generators sold and the prices the generators received for their capacity sales.” *See KeySpan-Ravenswood, LLC v. New York Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,062 at P 46 (2008). No Settling Party shall have any further liability in connection therewith or in connection with any other issues or claims before the Commission in Docket No. EL05-17-000, *et seq.*, on remand following the determination by the U.S. Court of Appeals for the D.C. Circuit, in *KeySpan-Ravenswood, LLC v. FERC*, 474 F.3d 804 (D.C. Cir. 2007). Therefore, as explained herein, the Settling Parties request approval of the Settlement Agreement as a just and reasonable final resolution of these issues.

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(f) (2), comments on the Offer of Settlement are to be filed on or before February 17, 2009 and reply comments are to be filed on or before February 25, 2009, unless other dates are provided by the Commission. As this Settlement Agreement is just and reasonable and in the public interest, the Settling Parties urge prompt approval by the Commission without condition or modification.<sup>1</sup>

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<sup>1</sup> Unless otherwise specified, capitalized terms have the meanings specified in the NYISO’s Market Administration and Control Area Services Tariff.

Respectfully Submitted,

/s/

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

<b>KeySpan-Ravenswood, LLC</b>	)	<b>Docket No. EL05-17-000</b>
	)	<b>Docket No. EL05-17-001</b>
	)	<b>Docket No. EL05-17-002</b>
<b>v.</b>	)	<b>Docket No. EL05-17-003</b>
	)	<b>Docket No. EL05-17-004</b>
<b>New York Independent System Operator, Inc.</b>	)	<b>Docket No. EL05-17-005</b>

**EXPLANATORY STATEMENT**

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, Reliant Energy, Inc. (“Reliant”), Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, Oswego Harbor Power LLC, and NRG Power Marketing, LLC (“NRG PML”) (collectively, the “NRG Companies”), Dynegy Power Marketing, Inc., Dynegy Northeast Generation, Inc. (collectively “Dynegy”) (Reliant, NRG Companies, and Dynegy are referred to herein individually as a “Settling Supplier” and collectively referred to herein as the “Settling Suppliers”), Consolidated Edison Company of New York, Inc. (“Con Edison”), Orange and Rockland Utilities, Inc. (“O&R”), Central Hudson Gas & Electric Corporation (“Central Hudson”), New York State Electric & Gas Corporation (“NYSEG”), Rochester Gas and Electric Corporation (“RG&E”), Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”), Long Island Power Authority (“LIPA”), New York Power Authority (“NYPA”), the New York Independent System Operator, Inc. (“NYISO”), Consolidated Edison Solutions, Inc. (“Solutions”), Constellation NewEnergy, Inc. (“Constellation”) and Gateway Energy Services Corporation (“Gateway”) (Con Edison, O&R, Central Hudson, NYSEG, RG&E, National Grid,

LIPA, NYPA, NYISO, Solutions, Constellation, Gateway and the Settling Suppliers are referred to herein individually as a “Settling Party” and collectively as the “Settling Parties”) hereby submit this statement (“Explanatory Statement”) in support of the Offer of Settlement (the “Settlement”) in the captioned docket. This Explanatory Statement is not intended to, and does not alter any of the provisions in the Settlement. In the event of a conflict between the terms of this Explanatory Statement and the Settlement, the terms of the Settlement shall govern.

The Settlement is being submitted as a final resolution of all issues that were raised, or could have been raised, in Docket No. EL05-17-000, *et seq* including “any damages New York generators, other than Ravenswood, suffered as a result of NYISO's violation of the filed rate doctrine, including whether and how the violation affected the amount of capacity the generators sold and the prices the generators received for their capacity sales.” *See KeySpan-Ravenswood, LLC v. New York Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,062 at P 46 (2008). No Settling Party shall have any further liability in connection therewith or in connection with any other issues or claims before the Commission in Docket No. EL05-17-000, *et seq.*, on remand following the determination by the U.S. Court of Appeals for the D.C. Circuit, in *KeySpan-Ravenswood, LLC v. FERC*, 474 F.3d 804 (D.C. Cir. 2007). Therefore, as explained herein, the Settling Parties request a determination that the evidentiary record in this case supports approval of the Settlement Agreement as a just and reasonable resolution of these issues.

## **BACKGROUND**

On October 27, 2004, Keyspan-Ravenswood, LLC (“Ravenswood”) filed a complaint against the NYISO. Ravenswood’s complaint argued that, for the Summer 2002 Capability Period (May-October 2002), 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 Load-Serving Entities (“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 to 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 on February 10, 2005. 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. Subsequent to the issuance of the D.C. Circuit’s order, Ravenswood, Con Edison, NYPA, NYISO, Consolidated Edison Solutions, Inc., Constellation NewEnergy, Inc. KeySpan Energy Services, Inc., Strategic Energy LLC, Hess Corporation, and Econnergy filed an offer of settlement on October 30, 2007 that by its terms would have resolved all issues in this docket. That settlement offer was contested by certain electric generators, i.e., the NRG Companies and Dynegy that would not have received any payment under the terms of that settlement.

By order issued on July 18, 2008, the Commission approved that offer of settlement but set for hearing the question of "an appropriate remedy for the contesting parties and *other similarly-situated entities*." *KeySpan-Ravenswood, LLC v. New York Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,062, P 1 (emphasis added). More specifically the Commission set for hearing "any damages New York generators, other than Ravenswood, suffered as a result of NYISO's violation of the filed rate doctrine, including whether and how the violation affected the amount of capacity the generators sold and the prices the generators received for their capacity sales." Id. at P 46. Thereafter, testimonies were filed by the Settling Suppliers, certain load serving entities, the NYISO, and Commission Staff.<sup>2</sup>

Hence, as explained herein, the Settling Parties request a determination that the evidentiary record in this case supports approval of the Settlement Agreement as a just and reasonable final resolution of these issues. And, as mentioned above, the load serving entities making payments under this Offer of Settlement, as Settling Parties, shall have no further liability in connection with the issues set for hearing in this docket including the issues or claims before the Commission in Docket No. EL05-17-000, *et seq.*, on remand following the determination by the U.S. Court of Appeals for the D.C. Circuit, in *KeySpan-Ravenswood, LLC v. FERC*, 474 F.3d 804 (D.C. Cir. 2007).

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<sup>2</sup> *KeySpan-Ravenswood, LLC v New York Indep. Sys. Operator, Inc.*, Direct Testimony of Jonathan A. Lesser on Behalf of Suppliers, Docket No. EL05-17-003 (Oct. 24, 2008); *KeySpan-Ravenswood, LLC v New York Indep. Sys. Operator, Inc.*, Answering Testimony of John W. Charlton on Behalf of the New York Independent System Operator, Inc., Docket No. EL05-17-003 (Dec. 5, 2008); *KeySpan-Ravenswood, LLC v New York Indep. Sys. Operator, Inc.*, Answering Testimony of Stephen B. Wemple on Behalf of Consolidated Edison Solutions, Inc., Docket No. EL05-17-003 (Dec. 5, 2008); *KeySpan-Ravenswood, LLC v New York Indep. Sys. Operator, Inc.*, Answering Testimony of the New York Transmission Owners, Docket No. EL05-17-003 (Dec. 5, 2008) and *KeySpan-Ravenswood, LLC v New York Indep. Sys. Operator, Inc.*, Answering Testimony of David W. Savitski on Behalf of FERC Staff, Docket No. EL05-17-003 (Jan. 7, 2009).



## THE OFFER OF SETTLEMENT

In section one of the Offer of Settlement, the Settling Parties agree that, subject to the terms of the settlement, the \$2.675 million settlement payment (“Settlement Payment”) will be the only payment made under this Settlement Agreement. Responsibility for payment of the Settlement Payment due to the Settling Suppliers shall be allocated as follows:

Con Edison	\$ 1,703,500
NYPA	292,500
Central Hudson	112,500
LIPA	112,500
NYSEG/RG&E	112,500
National Grid	112,500
Solutions	100,000
Constellation	100,000
O&R	19,000
Gateway	10,000

Section one also specifies that the Settlement Payment will be the only payment made under this Settlement Agreement. No Settling Supplier or any other supplier or other entity will be entitled to any other additional payment of any kind under this Settlement Agreement or otherwise from the Settling Parties identified in section 1.2 of the Offer of Settlement in connection with the issues and claims related to purchases or sales of ICAP or UCAP in any NYISO capacity markets for the 2002 Summer Capability Period including but not limited to the New York City (“In-City”) and Rest-of-State (“ROS”) Localities, and including but not limited to the calculation or award of damages or remedies for any tariff violation and including specifically but not limited to those issues and claims before the Commission in Docket No. EL05-17-000, *et seq.*, on remand following the determination by the U.S. Court of Appeals for the D.C. Circuit, in *KeySpan-Ravenswood, LLC v. FERC*, 474 F.3d 804 (D.C.Cir. 2007).

The Parties also agree that the Settlement Payment will be distributed as follows:

Reliant	\$1,700,000
NRG PML (on behalf of NRG)	300,000
Dynegy	675,000

In section two, the Parties agree that this Settlement fully resolves the issues set for hearing in this docket including “any damages New York generators, other than Ravenswood, suffered as a result of NYISO's violation of the filed rate doctrine, including whether and how the violation affected the amount of capacity the generators sold and the prices the generators received for their capacity sales.” *See KeySpan-Ravenswood, LLC v. New York Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,062 at P 46 (2008). No Settling Party shall have any further liability in connection therewith or in connection with any other issues or claims before the Commission in Docket No. EL05-17-000, *et seq.*, on remand following the determination by the U.S. Court of Appeals for the D.C. Circuit, in *KeySpan-Ravenswood, LLC v. FERC*, 474 F.3d 804 (D.C. Cir. 2007).

In section three, the Parties agree that the Settlement shall become effective upon issuance by the Commission of a Final Order: (1) approving this Settlement Agreement, without modification or condition or, if modified or conditioned, upon its acceptance by each of the Settling Parties (“Effective Date”); and (2) terminating the above-captioned docket with prejudice.

Section four contains general reservations to the Settlement.

## **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.*, on remand following the determination by the U.S. Court of Appeals for the D.C. Circuit, in *KeySpan-Ravenswood, LLC v. FERC*, 474 F.3d 804 (D.C. Cir. 2007).

#### 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.* On the Effective Date, each Settling Party shall be deemed to have withdrawn any complaint, request for rehearing, appeal, or other pleading with respect to the matters resolved by this Settlement.

#### 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 provides that it is not subject to change by the Settling Parties pursuant to Sections 205 and 206 of the Federal Power Act, and that the standard of review for any modifications resulting from the Commission acting *sua sponte*, or by non-parties shall be the most stringent standard permissible under applicable law.

## **CONCLUSION**

The Parties believe that the Offer of Settlement represents a just and reasonable final resolution of the issues in this proceeding that is supported by the evidentiary record and urge the Commission to approve it without modification expeditiously.

Dated: January 27, 2009

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

<b>KeySpan-Ravenswood, LLC</b>	)	<b>Docket No. EL05-17-000</b>
	)	<b>Docket No. EL05-17-001</b>
	)	<b>Docket No. EL05-17-002</b>
<b>v.</b>	)	<b>Docket No. EL05-17-003</b>
	)	<b>Docket No. EL05-17-004</b>
<b>New York Independent System Operator, Inc.</b>	)	<b>Docket No. EL05-17-005</b>

**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, Reliant Energy, Inc. (“Reliant”), Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, Oswego Harbor Power LLC, and NRG Power Marketing, LLC (“NRG PML”) (collectively, the “NRG Companies”), Dynegy Power Marketing, Inc., Dynegy Northeast Generation, Inc. (collectively "Dynegy") (Reliant, NRG Companies, and Dynegy are referred to herein individually as a "Settling Supplier" and collectively referred to herein as the “Settling Suppliers”), Consolidated Edison Company of New York, Inc. (“Con Edison”), Orange and Rockland Utilities, Inc. ("O&R"), Central Hudson Gas & Electric Corporation ("Central Hudson"), New York State Electric & Gas Corporation ("NYSEG"), Rochester Gas and Electric Corporation ("RG&E"), Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid"), Long Island Power Authority (“LIPA”), New York Power Authority (“NYPA”), the New York Independent System Operator, Inc. (“NYISO”), Consolidated Edison Solutions, Inc. (“Solutions”), Constellation NewEnergy, Inc. (“Constellation”) and Gateway Energy Services Corporation (“Gateway”) (Con Edison, O&R, Central Hudson, NYSEG, RG&E, National Grid, LIPA, NYPA, NYISO, Solutions, Constellation, Gateway and the Settling Suppliers are referred

to herein individually as a “Settling Party” and collectively as the “Settling Parties”) hereby submit this Offer of Settlement (“Settlement Agreement”), fully resolving all issues that were raised, or could have been raised, in Docket No. EL05-17-000, *et seq.* As this Settlement Agreement is just and reasonable and in the public interest, the Settling Parties urge prompt approval by the Commission without condition or modification.<sup>1</sup>

## SECTION ONE

### PAYMENT

- 1.1. The Settling Suppliers accept, collectively, for purposes of settlement, a one-time payment of \$2,675,000 (hereinafter the “\$2.675 Million Settlement Payment”), in full satisfaction of all claims in Docket No. EL05-17-000, *et seq.* that were raised or could have been raised.
- 1.2. Responsibility for payment of the \$2.675 Million Settlement Payment due to the Settling Parties listed in Section 1.4 shall be allocated as follows:

Con Edison	\$ 1,703,500
NYPA	292,500
Central Hudson	112,500
LIPA	112,500
NYSEG/RG&E	112,500
National Grid	112,500
Solutions	100,000
Constellation	100,000
O&R	19,000
Gateway	10,000

- 1.3. The Settling Parties agree that the \$2.675 Million Settlement Payment will be the only payment made under this Settlement Agreement. No Settling Supplier or any other

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<sup>1</sup> Unless otherwise specified, capitalized terms have the meanings specified in the NYISO’s Market Administration and Control Area Services Tariff.

supplier or other entity will be entitled to any other additional payment of any kind under this Settlement Agreement or otherwise from the Settling Parties identified in Section 1.2 above in connection with the issues and claims related to purchases or sales of ICAP or UCAP in any NYISO capacity markets for the 2002 Summer Capability Period including but not limited to the New York City (“In-City”) and Rest-of-State (“ROS”) Localities, and including but not limited to the calculation or award of damages or remedies for any tariff violation and including specifically but not limited to those issues and claims before the Commission in Docket No. EL05-17-000, *et seq.*, on remand following the determination by the U.S. Court of Appeals for the D.C. Circuit, in *KeySpan-Ravenswood, LLC v. FERC*, 474 F.3d 804 (D.C. Cir. 2007).

- 1.4. The NYISO will facilitate the recovery of such payments through adjustments to the billing invoices of the Settling Parties listed in Section 1.2. The \$2.675 Million Payment will be distributed by the NYISO by wire transfer as follows:

Reliant	\$1,700,000
NRG PML (on behalf of NRG)	300,000
Dynegy	675,000

- 1.5. The bill adjustments will be made in the next NYISO billing cycle that follows a Final Order (as specified below) by the Commission approving this Settlement Agreement. The \$2.675 Million Settlement Payment to the Settling Suppliers shall be due and fully paid within sixty (60) days after the bill adjustments are made in accordance with wire transfer information for each Settling Supplier as requested by the NYISO.

## SECTION TWO

### RELEASE OF CLAIMS

- 2.1 Notwithstanding anything to the contrary herein, in return for the consideration set forth in Section 1 hereof and the performance by each Settling Party of their respective obligations hereunder, on the Effective Date set forth in Section 3.1 hereof, each Settling Party shall be deemed to have forever released with prejudice, without any limitation or reservation, any and all claims, obligations, causes of action and liabilities, whether known or unknown, and whether asserted or not, related to purchases or sales of ICAP or UCAP in all NYISO capacity markets for the 2002 Summer Capability Period including but not limited to the New York City (“In-City”) and Rest-of-State (“ROS”) Localities, and including but not limited to the calculation or award of damages or remedies for any tariff violation and including specifically but not limited to those issues and claims before the Commission in Docket No. EL05-17-000, *et seq.*, on remand following the determination by the U.S. Court of Appeals for the D.C. Circuit, in *KeySpan-Ravenswood, LLC v. FERC*, 474 F.3d 804 (D.C. Cir. 2007).
- 2.2 This Settlement fully resolves the issues set for hearing in this docket including "any damages New York generators, other than Ravenswood, suffered as a result of NYISO's violation of the filed rate doctrine, including whether and how the violation affected the amount of capacity the generators sold and the prices the generators received for their capacity sales." *See KeySpan-Ravenswood, LLC v. New York Independent System Operator, Inc.*, 124 FERC ¶ 61,062 at P 46 (2008). No Settling Party shall have any further liability in connection therewith or in connection with any other issues or claims before the Commission in Docket No. EL05-17-000, *et seq.*, on



remand following the determination by the U.S. Court of Appeals for the D.C. Circuit, in *KeySpan-Ravenswood, LLC v. FERC*, 474 F.3d 804 (D.C. Cir. 2007).

- 2.3 On the Effective Date, each Settling Party shall be deemed to have withdrawn any complaint, request for rehearing, appeal, or other pleading with respect to the matters resolved by this Settlement.

### **SECTION THREE**

#### **EFFECTIVE DATE**

- 3.1 This Settlement Agreement shall become effective upon issuance by the Commission of a Final Order: (1) approving this Settlement Agreement, without modification or condition or, if modified or conditioned, upon its acceptance by each of the Settling Parties (“Effective Date”); and (2) terminating the above-captioned docket with prejudice. If the Commission accepts the Settlement Agreement without modification, no Settling Party will request rehearing or otherwise appeal or support rehearing requests or appeals. For purposes of this Settlement Agreement, a Commission order addressing the Settlement Agreement 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 the final decision of the U.S. Court of Appeals on the merits if such final decision upholds a settlement in this docket accepted by all the Settling Parties.

## SECTION FOUR

### GENERAL RESERVATIONS

- 4.1 This Settlement Agreement is an integrated whole and is expressly conditioned on the Commission's acceptance of all provisions herein without modification 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 Settling Party files written notice of objection to the Settlement Agreement, as modified or conditioned, with the Commission, and serves such notice on the other Settling 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 any Settling Party object to such condition or modification of the Settlement Agreement, the Settlement Agreement shall be deemed withdrawn and null and void and shall not constitute any part of the record in this docket, shall not be introduced as evidence in any administrative or court proceeding, and shall not be used for any other purpose.
- 4.2 For the sole purpose of settling the matters described herein, the Settling Parties agree that this Settlement Agreement represents a just and reasonable negotiated settlement that is in the public interest. The term of this Settlement Agreement shall not limit or restrict the arguments that any Settling Party may put forth, or the positions that any Settling Party may take, in any future proceeding before FERC, the courts or any administrative or adjudicatory body, including further proceedings in this docket as to any non-settling party. No Settling Party shall be deemed to have approved, accepted,

agreed, or consented to any concept, theory or principle underlying or alleged to underlie any of the matters provided for herein or to be prejudiced thereby in any future proceeding except as to the matters settled herein.

4.3 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 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.*

4.4 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 Procedure, 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 Settling

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

- 4.5 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 Settling Parties with respect to the subject matter addressed herein and supersedes all prior negotiations, understandings, and agreements, whether written or oral, between the Settling Parties with respect to the subject matter described herein.
- 4.6 The Settlement Agreement is not subject to change by the Settling Parties pursuant to Sections 205 and 206 of the Federal Power Act. The standard of review for any modifications resulting from the Commission acting *sua sponte*, or by non-parties shall be the most stringent standard permissible under applicable law.
- 4.7 Headings in this Settlement Agreement are included for convenience only and are not intended to have any significance in interpretation of this Settlement Agreement.
- 4.8 Signatures may occur by counterparts. Such signatures shall have the same effect as if all signatures were on the same document.

January 27, 2009

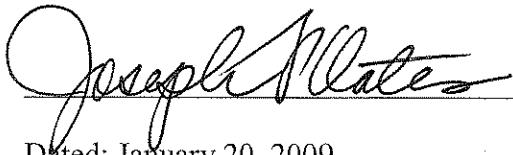
Respectfully submitted,

By: Christopher C. O'Hara

1/26/2009

Dated: January 16, 2009  
NRG Energy, Inc.  
211 Carnegie Center Drive  
Princeton, NJ 08540

**Counsel to Arthur Kill Power LLC,  
Astoria Gas Turbine Power LLC,  
Dunkirk Power LLC,  
Huntley Power LLC,  
Oswego Harbor Power LLC,  
and NRG Power Marketing, LLC**



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Dated: January 20, 2009

Joseph P. Oates

Vice President, Energy Management

Consolidated Edison Company of New York, Inc.,

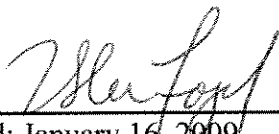
For Consolidated Edison Company of New York, Inc.  
and Orange and Rockland Utilities, Inc.

4 Irving Place

Room 1310-s

New York, NY 10003

Email: [oatesj@coned.com](mailto:oatesj@coned.com)



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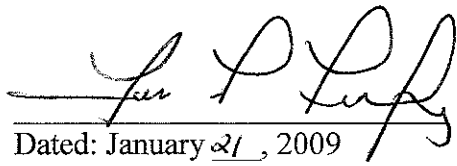
Dated: January 16, 2009

Usher Fogel

Gateway Energy Services Corporation

557 Central Avenue, Suite 4A

Cedarhurst, N. Y. 11516



Dated: January 21, 2009

Jorge J. Lopez

President

Consolidated Edison Solutions, Inc.

701 Westchester Avenue

Suite 300E

White Plains, NY 10604

Email: [lopezjj@conedsolutions.com](mailto:lopezjj@conedsolutions.com)





Dated: January 16, 2009

William F. Young

Hunton & Williams, LLP

1900 K Street, NW

Washington, DC 20006

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



Dated: January, 16, 2009

William J. Nadeau

Senior Vice President-Energy Resource Management

New York Power Authority

123 Main Street

White Plains, NY 10061



Dated: January 19, 2009

David O. Dardis

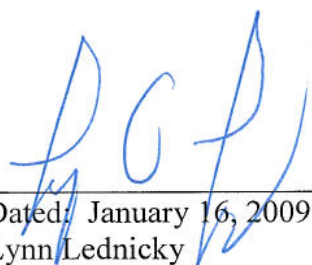
Chief Regulatory Counsel

Constellation Energy Group, Inc.

100 Constellation Way, Suite 500C

Baltimore, MD 21202

**Counsel to Constellation NewEnergy, Inc.**

  
Dated: January 16, 2009  
Lynn Lednicky  
Dynergy Inc.  
1000 Louisiana, Suite 5800  
Houston, TX 77002

TM

**On behalf of Dynergy Power Marketing, Inc. and  
Dynergy Northeast Generation, Inc.**

*Paul E. Haering*

Dated: January 16, 2009

Paul E. Haering

Vice President – Engineering & Environmental Services

Central Hudson Gas & Electric Corporation

284 South Avenue

Poughkeepsie, NY 12601

Telephone: (845) 486-5351

E-Mail: phaering@cenhud.com



Dated: January 16/2009

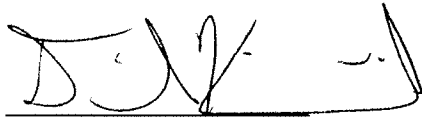
Michael D. Laflamme

National Grid

VP- Regulation & Pricing - ED&G

201 Jones Rd.

Waltham, MA 02451



Dated: January 16, 2009

Dave Kimiecik

Vice President – Energy Supply

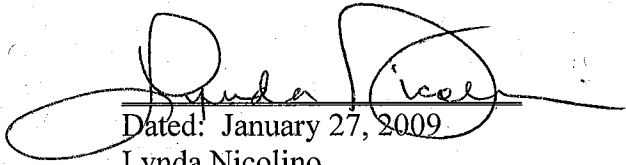
New York State Electric & Gas Corporation

Rochester Gas and Electric Corporation

Kirkwood Industrial Park

P.O. Box 5224

Binghamton, NY 13902-5224

A handwritten signature in black ink, appearing to read "Lynda Nicolino", is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

Dated: January 27, 2009

Lynda Nicolino

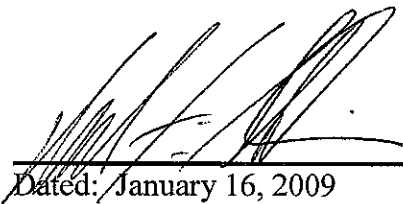
General Counsel and Secretary

Long Island Power Authority

333 Earle Ovington Boulevard, Suite 403

Uniondale, NY 11553





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Dated: January 16, 2009

David F. Sladic

Vice President and General Counsel, Wholesale & Corporate

Reliant Energy, Inc.

1000 Main Street

Houston, TX 77002

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

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

**ORDER APPROVING UNCONTESTED OFFER OF SETTLEMENT**  
(Issued February \_\_\_, 2009)

1. On January 27, 2009, an Offer of Settlement (the “Offer of Settlement”) was filed in the above-captioned proceeding by Reliant Energy, Inc. (“Reliant”), Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, Oswego Harbor Power LLC, and NRG Power Marketing, LLC (collectively, the “NRG Companies”), Dynegy Power Marketing, Inc., Dynegy Northeast Generation, Inc. (collectively “Dynegy”) (Reliant, NRG Companies, and Dynegy are referred to herein individually as a “Settling Supplier” and collectively referred to herein as the “Settling Suppliers”), Consolidated Edison Company of New York, Inc. (“Con Edison”), Orange and Rockland Utilities, Inc. (“O&R”), Central Hudson Gas & Electric Corporation (“CH”), New York State Electric & Gas Corporation (“NYSEG”), Rochester Gas and Electric Corporation (“RG&E”), Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”), Long Island Power Authority (“LIPA”), New York Power Authority (“NYPA”), the New York Independent System Operator, Inc. (“NYISO”), Consolidated Edison Solutions, Inc. (“Solutions”), Constellation NewEnergy, Inc.

("Constellation") and Gateway Energy Services Corporation ("Gateway") (collectively, with the Settling Suppliers, the "Settling Parties").

2. As more fully discussed below, the Federal Energy Regulatory Commission ("Commission" or "FERC") hereby approves the Offer of Settlement as a just and reasonable resolution of all issues in this docket.

### **BACKGROUND**

3. On October 27, 2004, Keyspan Ravenswood, LLC ("Ravenswood") filed a complaint against the NYISO. Ravenswood's complaint argued that, for the Summer 2002 Capability Period (May-October 2002), NYISO charged its members rates that were not consistent with its filed rate schedules by failing to comply with the New York State Reliability Council's Reliability Rules incorporated in three Commission-approved rate schedules. Ravenswood argued that the NYISO erroneously computed the amount of Installed Capacity ("ICAP") that Load-Serving Entities were required to acquire for the Summer 2002 Capability Period, based on a failure to accurately translate ICAP requirements into Unforced Capacity ("UCAP"), the units of capacity used in NYISO's capacity auctions. Ravenswood asserted that it lost approximately \$23.3 million in sales as a result of the NYISO's actions, and sought refunds, plus interest, to redress those losses.

4. The Commission concluded that the rates charged by the NYISO for the Summer 2002 Capability Period conformed to the Commission's prior UCAP orders governing the NYISO's ICAP and UCAP requirements, and were consistent with the NYISO's then effective tariffs, rate schedules and manuals. The Commission denied Ravenswood's complaint on February 10, 2005. Ravenswood filed requests for

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

5. Ravenswood filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit (the “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. Subsequent to the issuance of the Court's order, Ravenswood, Con Edison, NYPA, NYISO, Solutions, Constellation, KeySpan Energy Services, Inc., Strategic Energy LLC, Hess Corporation, and Econnergy filed an offer of settlement on October 30, 2007 with the FERC that by its terms would have resolved all issues in this docket. That settlement offer was contested by certain electric generators that would not have received any payment under the terms of that settlement.

6. By Order issued on July 18, 2008, the Commission approved that offer of settlement but set for hearing the question of “an appropriate remedy for the contesting parties and *other similarly-situated entities.*” See *KeySpan-Ravenswood, LLC v. New York Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,062, P 1 (emphasis added). More specifically, the Commission set for hearing “any damages New York generators, other than Ravenswood, suffered as a result of NYISO's violation of the filed rate doctrine, including whether and how the violation affected the amount of capacity the generators sold and the prices the generators received for their capacity sales.” *Id.* at P 46. A letter order establishing a procedural schedule was issued by the Presiding Administrative Law Judge on August 11, 2008. Thereafter, the parties engaged in extensive discovery, and testimonies were filed by the Settling Suppliers, certain load serving entities including the

New York Transmission Owners<sup>1</sup>, as well as the NYISO and the Commission Staff.<sup>2</sup> All parties active in those prehearing proceedings are now parties to the settlement before the Commission.

### **OFFER OF SETTLEMENT**

7. The Offer of Settlement provides a payment to the Settling Suppliers of \$2.675 million as a final resolution of all issues that were raised, or could have been raised, in Docket No. EL05-17-000, *et seq.*, including “any damages New York generators, other than Ravenswood, suffered as a result of NYISO’s violation of the filed rate doctrine, including whether and how the violation affected the amount of capacity the generators sold and the prices the generators received for their capacity sales.” *KeySpan-Ravenswood, LLC v. New York Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,062 at P 46 (2008). The Offer of Settlement provides that no Settling Party shall have any further liability in connection therewith or in connection with any other issues or claims that were raised or could have been raised in Docket No. EL05-17-000, *et seq.*, on remand following the determination by the Court in *KeySpan-Ravenswood, LLC v. FERC*, 474 F.3d 804 (D.C. Cir. 2007).

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<sup>1</sup> The New York Transmission Owners consist of CH, Con Edison, LIPA, National Grid, NYPA, NYSEG, O&R and RG&E.

<sup>2</sup> *KeySpan-Ravenswood, LLC v New York Indep. Sys. Operator, Inc.*, Direct Testimony of Jonathan A. Lesser on Behalf of Suppliers, Docket No. EL05-17-003 (Oct. 24, 2008); *KeySpan-Ravenswood, LLC v New York Indep. Sys. Operator, Inc.*, Answering Testimony of John W. Charlton on Behalf of the New York Independent System Operator, Inc., Docket No. EL05-17-003 (Dec. 5, 2008); *KeySpan-Ravenswood, LLC v New York Indep. Sys. Operator, Inc.*, Answering Testimony of Stephen B. Wemple on Behalf of Consolidated Edison Solutions, Inc., Docket No. EL05-17-003 (Dec. 5, 2008); *KeySpan-Ravenswood, LLC v New York Indep. Sys. Operator, Inc.*, Answering Testimony of the New York Transmission Owners, Docket No. EL05-17-003 (Dec. 5, 2008) and *KeySpan-Ravenswood, LLC v New York Indep. Sys. Operator, Inc.*, Answering Testimony of David W. Savitski on Behalf of FERC Staff, Docket No. EL05-17-003 (Jan. 7, 2009).

8. No Settling Supplier or any other supplier or other entity will be entitled to any other additional payment from any Settling Party or Settling Parties in connection with, or for any tariff violation relating to, purchases or sales of ICAP or UCAP in any NYISO capacity markets during the Summer 2002 Capability Period, including specifically but not limited to those issues and claims that were raised or could have been raised in Docket No. EL05-17-000, *et seq.*, on remand following the determination by the Court in *KeySpan-Ravenswood, LLC v. FERC*, 474 F.3d 804 (D.C. Cir. 2007).

9. Comments on the Offer of Settlement were due on February 17, 2009, and reply comments were due on February 25, 2009. On \_\_\_\_\_, 2009, the Commission's Staff filed comments in support of the Offer of Settlement. No other comments were received.

#### **COMMISSION DETERMINATION**

10. The Offer of Settlement will bring an end to all issues surrounding the NYISO's method of converting ICAP to UPCAP in the NYISO capacity markets for the 2002 Summer which have been litigated before this Commission and in the appellate court for over six years. The Settling Parties have filed extensive testimonies on the issues in this proceeding, and the Offer of Settlement is not contested by any party, nor has any party requested an opportunity for further discovery or evidentiary proceedings. Accordingly, we approve the Offer of Settlement as a just and reasonable final resolution of all issues that were or could have been raised in this proceeding by any party.

11. This order terminates Docket Nos. ER05-17-000 *et seq.*

#### **The Commission orders:**

- (A) The Offer of Settlement is approved as a final resolution of all issues that were raised or could have been raised in Docket No. EL05-17-000, *et seq.* including any damages New York generators, other than Ravenswood, suffered as a result of NYISO's violation of the filed rate doctrine, including whether and how the violation affected the amount of capacity the generators sold and the prices the generators received for their capacity sales. *See KeySpan-Ravenswood, LLC v. New York Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,062 at P 46 (2008).
- (B) No Settling Supplier or any other supplier or other entity will be entitled to any other additional payment from any Settling Party or Settling Parties in connection with, or for any tariff violation relating to, purchases or sales of ICAP or UCAP in any NYISO capacity markets during the Summer 2002 Capability Period, including specifically but not limited to those issues and claims that were raised or could have been raised in Docket No. EL05-17-000, *et seq.*, on remand following the determination by the U.S. Court of Appeals for the D.C. Circuit, in *KeySpan-Ravenswood, LLC v. FERC*, 474 F.3d 804 (D.C. Cir. 2007).
- (C) The Offer of Settlement is approved as a just and reasonable resolution of all issues.
- (D) No Settling Party shall have any further liability in connection with any issues or claims that were raised or could have been raised in

Docket No. EL05-17-000, *et seq.*, on remand following the determination by the U.S. Court of Appeals for the D.C. Circuit, in *KeySpan-Ravenswood, LLC v. FERC*, 474 F.3d 804 (D.C. Cir. 2007).

(E) Docket No. ER05-17-000 *et seq* are hereby terminated with prejudice.

**By the Commission**

**(SEAL)**

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 Washington, D.C. this 27<sup>th</sup> day of January 2009.

*/s/ Blen Degef*

Blen Degef

Paralegal

Dewey & LeBoeuf LLP

1101 New York Avenue, N.W.

Washington, DC 20005-4213

202-346-8000