UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

KeySpan-Ravenswood, LLC	Docket Nos. ER02-1398-002
KeySpan-Glenwood Energy Center, LLC	ER02-1470-002
KeySpan-Port Jefferson Energy Center, LLC	ER02-1573-002

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS
AND REVISED MARKET-BASED RATE TARIFF SHEETS

(Issued November 22, 2005)

1. In this order, the Commission accepts the updated market power analysis filed by KeySpan-Ravenswood, LLC (Ravenswood), KeySpan-Glenwood Energy Center, LLC (Glenwood), and KeySpan-Port Jefferson Energy Center, LLC (Port Jefferson) (collectively, KeySpan). The Commission also accepts revisions to KeySpan's market-based rate tariffs[1] to incorporate the change in status reporting requirement.[2] As discussed below, we conclude that KeySpan satisfies the Commission's standards for market-based rate authority.

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[1] Ravenswood, FERC Electric Tariff, Original Volume No. 1, First Revised Sheet No. 4; Glenwood, FERC Electric Tariff, Original Volume No. 1, First Revised Sheet No. 4; Port Jefferson, FERC Electric Tariff, Original Volume No. 1, First Revised Sheet No. 4.

[2] *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

Background

2. On June 1, 2005, KeySpan filed an updated market power analysis pursuant to the Commission's orders granting KeySpan authority to sell electric energy and capacity at market-based rates.[3]

3. Ravenswood is a wholly-owned subsidiary of KeySpan Corporation. Ravenswood owns and controls generation facilities located in Queens, New York that total approximately 2,450 MW. Except for a 250-MW combined-cycle facility that began operations in 2004, Ravenswood's generation was formerly owned by Consolidated Edison Co. of New York, Inc. (Con Edison).

4. Glenwood and Port Jefferson are indirect, wholly-owned subsidiaries of KeySpan Corporation. Glenwood owns and operates a 79-MW gas-fired facility located in Long Island, New York. Port Jefferson also owns and operates a 79-MW gas-fired facility located in Long Island, New York. KeySpan states that the output of both of these facilities is fully committed to the Long Island Power Authority (LIPA) under long-term contracts.

5. KeySpan Corporation is engaged in various aspects of the energy business, including natural gas distribution, electricity generation, and administrative services for energy, transmission and distribution operations. KeySpan states that another subsidiary of KeySpan Corporation provides oil and electricity purchase, sale, and trading services to LIPA pursuant to an Energy Management Agreement.[4] Another subsidiary provides

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[3] *MEP Investments, LLC*, 87 FERC ¶ 61,209 (1999); *KeySpan-Glenwood Energy Center, LLC,* Docket No. ER02-1470-000 (May 30, 2002) (unpublished letter order); *KeySpan-Port Jefferson Energy Center, LLC,* Docket No. ER02-1573-000 (June 12, 2002) (unpublished letter order).

[4] Under the agreement, KeySpan Energy Trading Service, LLC (Energy Trading) acts as LIPA's agent by: procuring and managing fuel oil supplies; buying, selling, trading through the NYISO; scheduling LIPA's generation resources to meet LIPA's sales; making off-system sales of energy not required to meet the needs of LIPA's customers; and purchasing from third parties additional energy and capacity to serve LIPA's customers. KeySpan states that Energy Trading is required under the agreement to act in accordance with the policies established by LIPA and prudent utility practice. Energy Trading is required to use its best efforts to obtain least-cost fuel and least-cost capacity and energy for the benefit of LIPA's customers. Energy Trading brokers electricity on behalf of LIPA as its agent and is not authorized under the agreement to take title to electricity brokered pursuant to the agreement.

transmission and distribution management services to LIPA, which are subject to LIPA's overall direction.[5] KeySpan states that it and its affiliates are required to conform to prescribed code of conduct standards governing affiliate relationships involving both gas and electric operations. KeySpan also states that it and its affiliates abide by LIPA's Standards of Conduct, which have been filed with the Commission for informational purposes, and LIPA's other rules and codes requiring the separation of transmission and merchant functions.

Notice of Filing

6. Notice of KeySpan's filing was published in the *Federal Register*, 70 Fed. Reg. 35,244 (2005), with interventions or protests due on or before June 24, 2005. None was filed.

Discussion

Market-Based Rate Authorization

7. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.[6] As discussed below, the Commission concludes that KeySpan satisfies the Commission's standards for market-based rate authority.

Generation Market Power

8. KeySpan states that the relevant geographic market for KeySpan's generation is smaller than the default market, the market administered by the New York Independent Operator, Inc. (NYISO). For Ravenswood, KeySpan states that, due to limited transmission capacity into and out of New York City, the relevant market is Zone J in the NYISO market. Similarly, for Glenwood and Port Jefferson, the relevant market is Zone K, since Long Island is also a transmission-limited area.

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[5] KeySpan states that KeySpan Electric Services, LLC (Electric Services), engages in the management of LIPA's transmission system under the direct control and supervision of LIPA.

[6] *See, e.g., Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

9. KeySpan states that it is choosing the procedural option of foregoing the submittal of a generation market power analysis, accepting the presumption of market power, and demonstrating that its market power is adequately mitigated.[7] KeySpan states that any market power it may possess is mitigated through the operation of the NYISO's existing market monitoring and mitigation (Market Mitigation).[8]

10. KeySpan explains that, based on market mitigation rules put in place in 1998 for former Con Edison units (predating the establishment of NYISO's Market Mitigation), the Ravenswood units that were formerly owned by Con Edison are subject to bid and price caps for capacity sales.[9] Additionally, KeySpan represents that Ravenswood must offer and sell the capacity of those units through the NYISO market rather than entering into bilateral contracts. KeySpan states that a recently-installed 250 MW unit is subject to NYISO's general Market Mitigation that prohibits physical and economic withholding, but is not subject to the prohibitions placed upon the former Con Edison units. KeySpan states that the NYISO capacity markets discipline the markets such that Ravenswood cannot exercise market power with the additional 250 MW of capacity. KeySpan states that, upon making capacity sales in the NYISO market, Ravenswood must then comply with the must-offer requirements of the NYISO tariff applicable to energy available from installed capacity suppliers, which requires these suppliers to offer the energy associated with their capacity sales into the day-ahead market.

11. In addition to capacity mitigation and must-offer requirements, KeySpan states that Ravenswood is subject to NYISO's In-City Day Ahead and Real Time Automated Mitigation Procedure (Automated Mitigation Procedure). KeySpan states that for New York City, the Automated Mitigation Procedure uses conduct thresholds in the markets

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[7] *AEP Power Marketing, Inc*., 107 FERC ¶ 61,018 at P 39 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

[8] *New York Independent System Operator, Inc*., 89 FERC ¶ 61,196 (1999); and *New York Independent System Operator, Inc*., 90 FERC ¶ 61,317 (2000).

[9] *Consolidated Edison Co. of New York, Inc.*, 84 FERC ¶ 61,287 (1998). These measures were adopted by Con Edison, specifically for the units it planned to divest, in response to conditions placed on the Public Service Commission of the State of New York's approval of Con Edison's divestiture plan. The Commission noted that the price caps will be in addition to any market power mitigation measures that may be later established for the New York market. The NYISO ultimately came to administer the in-city price cap as part of its mitigation measures. *See New York Independent System Operator, Inc.*, 99 FERC ¶ 61,246 (2002).

based on formulas incorporating congestion data on a rolling twelve-month basis, which prevent suppliers from having the ability to increase energy prices above pre-established reference prices.

12. For Port Jefferson and Glenwood, located on Long Island, KeySpan states that they are fully committed to LIPA pursuant to long-term, market-based rate contracts. KeySpan states that these contracts were entered into after a competitive procurement process, and LIPA's secondary sales of energy and capacity from those units into the NYISO markets are subject to the NYISO's Market Mitigation.

13. KeySpan states that the NYISO Market Mitigation has proven effective in mitigating market power. KeySpan notes the conclusions of NYISO's independent market advisor that the NYISO markets perform competitively with no evidence of significant economic or physical withholding. KeySpan concludes, therefore, that, for all of the reasons noted above, its market power is adequately mitigated.

14. As the Commission explained in the April 14 Order, in contrast to other markets, markets with Commission-approved market monitoring and mitigation undertake daily and hourly oversight of seller's pricing behavior to ensure, consistent with clearly established Commission-approved rules, that prices do not exceed competitive levels.[10]

15. The evaluation and mitigation of market power in markets with Commission-approved market monitoring and mitigation does not depend upon a snapshot test of the size or concentration of ownership of any seller. Such mitigation is typically implemented in real-time and in advance of any market price impact. All sellers' interactions with the market are required to comply with predetermined bidding restrictions and Commission-approved rules and mitigation protocols. High locational prices or binding transmission constraints can trigger the market monitor into further examining the market outcome.

16. In addition, in markets with Commission-approved market monitoring and mitigation, electricity products are often broken up into tradable components with distinct markets such as energy, installed capacity and various ancillary services (some of which have forward elements such as forward reserves). The creation of fungible tradable electricity products (*e.g.*, installed capacity and energy balancing) facilitates the development of a competitive market for each of the subcomponents.

[10] April 14 Order, 107 FERC ¶ 61,018 at P 190-191.

17. Under Commission orders allowing NYISO to implement its Market Mitigation, NYISO is responsible for monitoring the markets administered or controlled by NYISO and for mitigating a participant's conduct when NYISO determines that market power has been exercised.[11] The Market Mitigation has specific threshold values for identifying generators or transmission facilities that exercise market power. NYISO imposes mitigation when a participant's conduct has a material effect on prices. NYISO has specific mitigation in place to deal with transmission-constrained areas such as New York City and Long Island. The Commission has also stated that the NYISO Market Mitigation ensures adequate capacity and just and reasonable wholesale power prices.[12]

18. The automated mitigation procedures in New York City area are activated when the NYISO's day-ahead software computer algorithm that calculates day-ahead prices makes a preliminary determination that prices will exceed $150 absent mitigation.[13] Once the automated mitigation procedures are activated, bids are mitigated if specific thresholds for both bidding conduct and market impact are crossed. The conduct test compares the bid level against a reference level for each generator. NYISO identifies economic withholding by observing bids that exceed a unit's reference level by a specified dollar or percentage threshold. If the reference level is exceeded by a predetermined amount, then the second test, the impact test is applied to determine whether those bids cause a material change in one or more prices or an increase in guarantee payments.

19. The conduct and impact thresholds are lower for New York City when constraints are present. NYISO substitutes a default bid designed to cause a market participant to bid as if faced by a competitive market for participants who exceed thresholds for withholding. The participant will be paid the clearing price for that period, except that the application of the default bid will not be allowed to set the clearing price. In addition, NYISO has in place penalties for providing false information regarding derating or outages of a facility or for a participant who fails to follow dispatch instructions resulting in a material increase of the clearing price or bid guarantee payments.

[11] *See supra* note 8.

[12] *New York Independent System Operator, Inc.*, 103 FERC ¶ 61,201 at P 24 (2003).

[13] *New York Independent System Operator, Inc.*, 99 FERC ¶ 61,246 at 62,037 (2002).

20. The Commission stated in the July 8 Order that if a participant in an ISO/RTO points to the mitigation imposed by the ISO/RTO as eliminating the ability to exercise market power, we would analyze this proposal on a case-specific basis, where intervenors would be able to argue that the mitigation was not sufficient to adequately mitigate the applicant's market power.[14] No intervenor has argued that the mitigation already in place for KeySpan in the relevant market is insufficient.

21. Accordingly, the Commission finds that KeySpan has sufficiently mitigated its generation market power and that KeySpan satisfies the Commission's generation market power standard for the grant of market-based rate authority.

Transmission Market Power

22. KeySpan states that, except for interconnection facilities, neither KeySpan nor its affiliates own transmission. While a KeySpan affiliate provides certain transmission-related services for LIPA, KeySpan asserts that any transmission market power that may be ascribed to KeySpan is mitigated by the fact that LIPA has transferred operational control of its transmission system to NYISO. Further, no intervenor has raised transmission market power concerns. Based on these representations, the Commission finds that the KeySpan satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

Other Barriers to Entry

23. KeySpan states that neither it nor any of its affiliates has the ability to erect barriers to entry. KeySpan states that neither it nor its affiliates exercises control over site for generating plants that could restrict entry into the market by other suppliers. KeySpan asserts that it is affiliated with natural gas pipelines, and local distribution companies located in New York, and that those companies are barred under New York state law and orders of the New York Public Service Commission, as well a code of conduct, from engaging in anticompetitive treatment of other generators that may compete with KeySpan. No intervenor has raised concerns regarding barriers to entry. Based on these representations, the Commission is satisfied that KeySpan cannot erect barriers to entry. We note that, in *Enron Power Marketing, Inc.*, 65 FERC ¶ 61,305 (1993), the Commission determined that a power marketer may be affiliated with an interstate natural gas pipeline because, under the Commission's requirements, such pipelines must offer open access services on a non-discriminatory basis. Also, in *Vantus Energy Corporation*, 73 FERC ¶ 61,099 (1995), the Commission further explained that

[14] July 8 Order, 108 FERC ¶ 61,026 at P 174.

affiliation with an interstate natural gas pipeline does not raise market power concerns because the pipeline is subject to the Commission's natural gas pipeline open access requirements. However, should KeySpan or any of its affiliates deny, delay or require unreasonable terms, conditions or rates for natural gas service to a potential electric competitor in bulk power markets, that electric competitor may file a complaint with the Commission that could result in the suspension of KeySpan's authority to sell energy at market-based rates.[15]

Affiliate Abuse

24. KeySpan states that neither KeySpan nor any of its affiliates has a franchised electric service territory or any captive customers, therefore KeySpan cannot engage in affiliate abuse. In addition, no intervenors have raised affiliate abuse concerns. Based on these representations, we find that KeySpan satisfies the Commission's concerns with regard to affiliate abuse.

Reporting Requirements

25. In Order No. 664, the Commission stated that it intends to no longer grant waivers of the full requirements of Part 45 in its orders granting market-based rate authority.[16] Rather, persons seeking to hold interlocking positions will be required henceforth to comply with the full requirements of Part 45. With respect to an individual who currently is authorized to hold interlocking positions, that individual will not need to refile under the full requirements of Part 45 to continue to hold such interlocking positions (unless and until that individual assumes different or additional interlocking positions).[17] Thus, consistent with Order No. 664, KeySpan will be required henceforth to comply with the full requirements of Part 45.

26. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction

[15] *See, e.g., Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 at 61,148 (1993) (regarding affiliated intrastate natural gas pipelines and affiliates with gas storage facilities).

[16] *See Commission Authorization to Hold Interlocking Positions*, Order No. 664, 112 FERC ¶ 61,298 at P 34, FERC Stats. & Regs. ¶ 31,194 (2005).

[17] *Id*. at P 36.

information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.[18] Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.[19]

27. KeySpan must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.[20]

28. KeySpan is directed to file an updated market power analysis within three years of the date of this order. The Commission also reserves the right to require such an analysis at any time.

The Commission orders:

(A) KeySpan's updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) KeySpan's next updated market power analysis is due within three years of the date of this order.

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[18] *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at http://www.ferc.gov/docs-filing/eqr.asp.

[19] The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2005). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

[20] *Supra* note 2.

(C) KeySpan's revised tariff sheets are accepted for filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.