STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Joint Petition of National Grid PLC and KeySpan Corporation for Approval of Stock Acquisition and other Regulatory Authorizations.	Case 06-M-0878
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STATEMENT OF THE NEW YORK STATE CONSUMER PROTECTION BOARD IN SUPPORT OF JOINT PROPOSAL

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Albany, New York

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STATEMENT OF THE NEW YORK STATE CONSUMER PROTECTION BOARD IN SUPPORT OF JOINT PROPOSAL

The New York State Consumer Protection Board ("CPB") submits this Statement in full support of the Merger and Revenue Requirement Joint Proposal ("Proposal") filed by National Grid PLC ("National Grid") in these cases on July 6, 2007. The Proposal calls for Commission approval of the proposed acquisition of KeySpan Corporation and establishes five-year revenue requirement rate plans for KeySpan's utility subsidiaries KeySpan Energy Delivery New York ("KEDNY") and KeySpan Energy Delivery Long Island (KEDLI"). It includes numerous measures and safeguards to ensure that the acquisition is in the public interest. If approved by the New York State Public Service Commission's ("PSC" or "Commission"), it will provide substantial benefits for customers of KEDNY, KEDLI and National Grid (jointly, "Merging Companies"). The Proposal is supported by a broad spectrum of parties representing diverse interests and fairly balances the interests of consumers and shareholders. The CPB recommends that it be approved expeditiously.

Overview

National Grid and KeySpan entered into an agreement on February 25, 2006 under which National Grid would acquire KeySpan for cash. The companies requested PSC approval of the transaction and associated rate plans for KEDNY and KEDLI.

The CPB filed detailed testimony on February 20, 2007 in which we evaluated the proposed transaction and associated rate plans and the impacts of those proposals on consumers. We explained that the risks to consumers were real and potentially understated by the companies, while the benefits could prove to be relatively small and possibly overstated by the companies. As a result, we concluded that the PSC should not approve the transaction unless it conditioned that approval upon approximately two dozen safeguards we demonstrated were needed to protect the interests of consumers.

Numerous parties with diverse interests and concerns participated in lengthy settlement discussions with the merging Companies, including the CPB, the Department of Public Service ("DPS") Staff, the Public Utility Law Project, the City of New York, Multiple Intervenors, representatives of labor unions, and several energy service companies. The current Proposal is the broadly-supported result of those efforts.

The CPB's objective in this case has been to ensure that the merger is approved only if consumers obtain tangible benefits that far exceed any risks they are required to assume. The Proposal achieves that objective and ensures that the merger will be in the public interest. In addition, for the reasons we discuss herein, it fully satisfies the PSC's Settlement Guidelines.

The Settlement Guidelines

The Commission has adopted standards to evaluate whether negotiated proposals for the resolution of contested proceedings are in the public interest.[1] Among those Settlement Guidelines are the following:

> 1. A desirable settlement should strive for a balance among (a) protection of the ratepayers, (b) fairness to investors, and (c) the long term viability of the utility; should be consistent with sound environmental, social and economic policies of the agency and the State; and should produce results that were within the range of reasonable results from a Commission proceeding.
>
> 2. In judging a settlement, the Commission should give weight to the fact that a settlement reflects agreement by normally adversarial parties.[2]

The Proposal in this proceeding is well-balanced and provides substantial consumer benefits. It would have been difficult to achieve, and would not likely have been improved, through full litigation. As stated above, it is supported by a broad range of parties who do not always agree on substance. For all these

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[1] Cases 90-M-0255 and 92-M-0138, Settlement Procedures and Guidelines ("Settlement Guidelines"), Opinion No. 92-2, issued March 19, 1992.

[2] Id., Appendix B, at 8.

reasons, the Commission should conclude that the Proposal fully satisfies the Settlement Guidelines.

<u>Benefits to Consumers</u>

The CPB recommended that approval of the transaction be conditioned upon ratepayers receiving the benefit of net synergy savings beyond the level proposed by the companies. The Proposal does that, and fully addresses the CPB's concerns regarding the financial benefits to consumers.

Earlier in Cases 06-G-1185 and 06-G-1186, an agreement in principle among several parties was reached on revenue requirements and a three-year rate plan for those companies under the assumption that they continue as stand-alone entities. That agreement provides for the following revenue requirement increases: KEDNY - $30.3 million, $12.8 million and $12.4 million in the next three years, respectively; KEDLI - $88.3 million, $26.1 million and $13.3 million in the next three years, respectively. Thus, in the absence of the Proposal, KEDNY and KEDLI customers would pay an additional $128.9 million and $330.4 million, respectively, in the next three years.

The Proposal provides a five-year rate plan for both companies under which there would be no increase in gas delivery revenue requirement in each of five years, and a one-time increase of $60 million for KEDLI in the first year. Thus, KEDNY and KEDLI customers would avoid the rate increases identified above, and be provided two additional years of a rate freeze. Over five years, the Proposal will provide total delivery rate reductions of $602.8 million for the KeySpan companies.

National Grid's electric and gas customers would also obtain financial benefits if the Proposal is approved. They will be provided a share of net synergy savings consistent with the requirements of the Commission-approved rate plan for Niagara Mohawk customers.[3]

The five-year rate plans for the KeySpan companies are also of reasonable duration, as opposed to the ten-year plans originally proposed by the companies. In addition, they include balanced and reasonable provisions regarding ratemaking deferrals and true-ups that fully resolve the CPB's concerns regarding the companies' original proposal. In particular, provisions which limit deferrals when earnings exceed a specified threshold, and which require the KeySpan companies to share excess earnings with customers are fair.

The CPB explained in direct testimony that the merger should only be approved with safeguards to ensure that the quality of service provided to KeySpan and National Grid customers does not deteriorate. The Proposal contains several provisions that address this concern.

For KEDNY and KEDLI, agreement in principle has been reached on strong measures to address customer service quality and safety as part of Cases 06-G-1185 and 06-G-1186. For the Niagara Mohawk operations, the Proposal provides for additional staffing for transmission operations as well as for a

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[3] Case 00-M-0075, Joint Proposal, Attachment 10, p. 1.

commitment to add 30 positions annually in distribution operations for the next three years.

Measures to Protect Consumers Against Risks

The CPB testified that without proper safeguards, approval of the transaction would create several risks for consumers, including the potential for increased capital costs and the possibility that the merged company could exercise vertical market power through its ownership of both electricity generation and transmission facilities. The Proposal contains numerous measures to prevent utility customers from bearing these risks.

The Proposal also incorporates several important measures to address the risk that the transaction would jeopardize the financial integrity of utility customers and cause them to pay higher charges as a result of the degradation of the utility's financial position. It would prevent the companies from reflecting goodwill – the excess purchase price over the fair value of the assets of the KeySpan companies – in regulatory accounts. It will also preclude KEDNY and KEDLI from paying dividends without PSC approval in the event that their bond ratings or those of National Grid, fall below threshold levels. The Proposal also ensures that any debt associated with the merger would not be reflected as an obligation of KEDNY or KEDLI.

Regarding the risk of the companies exercising vertical market power, the Proposal requires National Grid to divest the Ravenswood Station under specified terms. Pending divestiture, the plan's output will be sold at a fixed price, ensuring that the company cannot benefit from an increase in the price of energy.

Broad Support

The Proposal is supported by parties representing diverse interests, who in past proceedings before the PSC have taken adversarial positions. These parties include the companies, CPB, DPS Staff, City of New York, Public Utility Law Project and International Brotherhood of Electric Workers Local 97. The fact that all these parties find the Proposal, as a whole, to be beneficial, strongly supports the conclusion that it is indeed in the public interest.

CONCLUSION

For the reasons set forth herein, the CPB recommends that the broadly supported Joint Proposal submitted to the Commission in these proceedings be approved in its entirety.

Respectfully submitted,

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Chairperson and Executive Director

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Dated: July 11, 2007
Albany, New York