

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

)	
UNITED STATES OF AMERICA,)	ECF Case
)	
Plaintiff,)	Civil Action No.: 1:10-cv-01415-WHP
)	Hon. William H. Pauley III
v.)	
)	
KEYSPAN CORPORATION,)	
)	
Defendant.)	
)	

DECLARATION OF OLIVER M. RICHARD

Oliver M. Richard declares:

1. I am the Assistant Chief in the Economic Litigation Section of the Antitrust Division of the United States Department of Justice.
2. I received a Ph.D. in Managerial Economics and Decision Sciences from the J.L. Kellogg Graduate School of Management at Northwestern University in 1997. I received a B.A in Economics and Mathematics from Swarthmore College in 1991 and studied under a fellowship grant from the European Commission at the Institut D’Economie Industrielle in 1996.
3. From 1997 to 2004, I taught economics at the Simon School of Business at the University of Rochester. I joined the Antitrust Division in 2004 as a Research Economist and became an Assistant Chief in 2007. I have published in leading peer-reviewed economics journals.
4. My current responsibilities involve supervising economic work performed by staff economists relating to electricity, energy, transportation and telecommunication matters. I have supervised economics staff in numerous antitrust investigations in the electricity industry, including investigations involving electricity generation capacity auctions like the auction underlying the present matter.
5. I submit this declaration in support of the Plaintiff United States’s Response to Public Comments filed with the Court on June 11, 2010 and in response to the request made by the Court of the United States at a status conference on October 12, 2010. This declaration describes the net revenues KeySpan received under its January 18, 2006 financial derivative agreement relating to the New York City Installed Capacity Market (the “KeySpan Swap”) with a financial

services company (“FSC”) during the twenty-four month period from May 2006 through April 2008.

6. The New York Independent System Operator (“NYISO”) conducts three types of auctions for New York City capacity for each month of the summer and winter seasons: a strip auction, a monthly auction, and a spot auction. The market prices set in each of these auctions are published by the NYISO on its website.¹

7. During the relevant period, the NYISO also established separate bid caps for each of the three owners of divested generation (“DGOs”) in New York City, *i.e.*, KeySpan, Astoria and NRG. These caps are published by the NYISO on its website.²

8. KeySpan filed a copy of the KeySpan Swap agreement under a Form 8-K with the Securities and Exchange Commission on January 24, 2006.³ The relevant document in the Form 8-K filing for determining the revenues under the KeySpan Swap is titled “Appendix A – Form of Confirmation.”

9. Under the terms of the KeySpan Swap:

- a. If the spot auction clearing price for capacity was above \$7.57 per kW-month, the FSC would pay KeySpan the difference between (a) the lesser of (i) the spot auction clearing price for the relevant month or (ii) the average of the three DGOs’ bid cap and (b) \$7.57, times 1,800,000 kW (*i.e.*, 1800 MW).

Example 1: If in a given month the spot auction clearing price is \$12.71 (which is above \$7.57) and the average of the three DGOs’ bid cap is \$12.49, then the lesser is \$12.49. The difference between \$12.49 and \$7.57 equals \$4.92.

Multiplying \$4.92 by 1,800,000 kW yields \$8,862,000, which is the amount of revenues Keyspan would earn that month under this example.

- b. If the spot auction clearing price for capacity was below \$7.57 per kW-month, KeySpan would pay the FSC the difference between (a) the lesser of (i) the spot auction clearing price for the relevant month or (ii) the average of the three DGOs’ bid cap and (b) \$7.57, times 1,800,000 kW (*i.e.*, 1800 MW).

¹ *See, e.g.*, http://icap.nyiso.com/ucap/public/auc_view_spot_detail.do, reporting the spot auction price in New York City for May 2006.

² *See, e.g.*, <http://www.nyiso.com/public/webdocs/products/icap/auctions/Summer-2006/documents/ShapedPriceCaps06-07.pdf>, reporting DGO caps for Summer 2006.

³ <http://www.sec.gov/Archives/edgar/data/1062379/000106237906000004/0001062379-06-000004-index.htm>

Example 2: If in a given month the spot auction clearing price is \$5.84 (which is below \$7.57) and the average of the three DGOs' bid cap is \$5.74, then the lesser is \$5.74. The difference between \$5.74 and \$7.57 equals -\$1.83. Multiplying -\$1.83 by 1,800,000 kW yields -\$3,294,000 and, thus, Keyspan would pay \$3,294,000 to the FSC that month under this example.

10. Applying these formulas and using public information from the NYISO website on spot auction prices and the DGO bid caps, I calculate that KeySpan received net revenues of \$48,960,000. I have attached as Exhibit 1 to my declaration a table summarizing my calculations.

11. With the exception of March and April 2008, the spot auction clearing price was equal, each month, to Keyspan's bid cap. It is my understanding that the drop in spot auction price during the these last two months of the relevant period reflects the effect of a New York State Public Service Commission's ("NYSPSC") order requiring KeySpan to bid its capacity at zero in these two months.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

10/26/10
Date

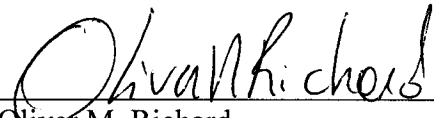

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Exhibit 1
KeySpan's Swap Revenues

Swap Revenue Calculations May 06-April 08							
Columns			(1)	(2)			
Year/Month	Auction Type	Month	Spot Auction Clearing Price	Average of DGO Bid Caps	Lesser of columns (1) and (2)	KeySpan Swap Revenue*	Cumulative Total
2006 05	Spot	May	\$ 12.71	\$ 12.49	\$ 12.49	\$8,862,000	\$8,862,000
2006 06	Spot	June	\$ 12.71	\$ 12.49	\$ 12.49	\$8,862,000	\$17,724,000
2006 07	Spot	July	\$ 12.71	\$ 12.49	\$ 12.49	\$8,862,000	\$26,586,000
2006 08	Spot	August	\$ 12.71	\$ 12.49	\$ 12.49	\$8,862,000	\$35,448,000
2006 09	Spot	September	\$ 12.71	\$ 12.49	\$ 12.49	\$8,862,000	\$44,310,000
2006 10	Spot	October	\$ 12.71	\$ 12.49	\$ 12.49	\$8,862,000	\$53,172,000
2006 11	Spot	November	\$ 5.84	\$ 5.74	\$ 5.74	-\$3,294,000	\$49,878,000
2006 12	Spot	December	\$ 5.84	\$ 5.74	\$ 5.74	-\$3,294,000	\$46,584,000
2007 01	Spot	January	\$ 5.84	\$ 5.74	\$ 5.74	-\$3,294,000	\$43,290,000
2007 02	Spot	February	\$ 5.84	\$ 5.74	\$ 5.74	-\$3,294,000	\$39,996,000
2007 03	Spot	March	\$ 5.84	\$ 5.74	\$ 5.74	-\$3,294,000	\$36,702,000
2007 04	Spot	April	\$ 5.84	\$ 5.74	\$ 5.74	-\$3,294,000	\$33,408,000
2007 05	Spot	May	\$ 12.72	\$ 12.50	\$ 12.50	\$8,874,000	\$42,282,000
2007 06	Spot	June	\$ 12.72	\$ 12.50	\$ 12.50	\$8,874,000	\$51,156,000
2007 07	Spot	July	\$ 12.72	\$ 12.50	\$ 12.50	\$8,874,000	\$60,030,000
2007 08	Spot	August	\$ 12.72	\$ 12.50	\$ 12.50	\$8,874,000	\$68,904,000
2007 09	Spot	September	\$ 12.72	\$ 12.50	\$ 12.50	\$8,874,000	\$77,778,000
2007 10	Spot	October	\$ 12.72	\$ 12.50	\$ 12.50	\$8,874,000	\$86,652,000
2007 11	Spot	November	\$ 5.77	\$ 5.67	\$ 5.67	-\$3,420,000	\$83,232,000
2007 12	Spot	December	\$ 5.77	\$ 5.67	\$ 5.67	-\$3,420,000	\$79,812,000
2008 01	Spot	January	\$ 5.77	\$ 5.67	\$ 5.67	-\$3,420,000	\$76,392,000
2008 02	Spot	February	\$ 5.77	\$ 5.67	\$ 5.67	-\$3,420,000	\$72,972,000
2008 03	Spot	March	\$ 1.05	\$ 5.67	\$ 1.05	-\$11,736,000	\$61,236,000
2008 04	Spot	April	\$ 0.75	\$ 5.67	\$ 0.75	-\$12,276,000	\$48,960,000
Total Swap Revenues for Keyspan from 05/2006 through 04/2008							\$48,960,000
* Computed as (Lesser - \$7.57) times 1,800,000 kW (1800 MW) Positive values are payments made to KeySpan in summer months Negative values are payments made by KeySpan in winter months							