Received: 10/03/2006
Status: CANCELLED
Effective Date: 01/01/2008

Form of Facilities Construction and Reimbursement Agreement
For Electric Generation – Third Party (continued)

7.2 Reimbursement. Customer shall reimburse KeySpan for all costs and expenses reasonably incurred by KeySpan in connection with this Agreement (the "Actual Cost") including but not limited to: filing and other fees paid to governmental agencies; costs incurred in connection with securing rights of way; costs related to preparation of this Agreement; costs related to design, engineering, construction, inspection, procurement of materials, site remediation and clean up; overtime or additional charges occasioned by changes in the scope of work or schedule requested by Customer. Such costs include internal costs and third party costs; all federal, state, or local taxes and tax liabilities incurred by KeySpan as a result of its performance of this Agreement; and, tax liabilities incurred by KeySpan as a result of payments by Customer hereunder. KeySpan's labor in connection with administration, implementation and performance of this Agreement shall be charged at direct salary costs plus an administrative loading factor for indirect costs. Direct salary will be based on the actual salaries and hours of the personnel assigned. Based upon the best information available at the time of the execution of this Agreement, KeySpan estimates that the total cost including associated tax liabilities will be $_____ (the "Estimated Cost") the components of which are set forth in Exhibit "C". KeySpan will use reasonable efforts to complete the work for an amount not in excess of the Estimated Cost, however, such Estimated Cost shall not be construed as a limit on KeySpan's right to reimbursement, and shall not in any way limit Customer's obligation to pay or reimburse KeySpan for the Actual Cost. KeySpan shall have the right to revise the Estimated Cost as work progresses. Should the Estimated Cost be revised, the remaining Customer payments will be adjusted to reflect the revised estimate. Customer shall be responsible for all electrical feeds required by and for the power consumed by KeySpan during construction at the Plant.

7.3 Tax Treatment. KeySpan intends to treat all payments received pursuant to this Agreement as taxable under State and Local sales tax laws at the current combined State and Local rate of ____%, except to the extent Customer furnishes KeySpan with a valid exempt use certificate as to State sales tax. In the event that Customer obtains a valid final advisory opinion or other binding and final ruling or order from New York State Department of Taxation and Finance or other taxing authority having jurisdiction that the reimbursements in question are not subject to state and/or local sales tax, then to the extent KeySpan is not required to pay or remit the tax, or is entitled to a refund of taxes paid on account of the reimbursements, KeySpan shall refund the amounts theretofore paid by Customer on account of such sales tax liabilities.

Cancelled by supplement No. 44 effective 01/01/2008
Suspended to 01/01/2008 by order in Case 06-G-1185. See Supplement No. 43. Th e supplement filing date was 08/30/2007
Suspended to 09/03/2007 by order in Case 06-G-1185. See Supplement No. 42. Th e supplement filing date was 02/27/2007
Suspended to 03/03/2007 by order in Case 06-G-1185. See Supplement No. 41. Th e supplement filing date was 11/01/2006