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THE BROOKLYN UNION GAS COMPANY
d/b/a KEYSPAN ENERGY DELIVERY NEW YORK
One MetroTech Center
Brooklyn, New York 11201

May 31, 2001

Via Electronic Transmission
and Federal Express

Honorable Janet Hand Deixler
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223

Re: The Brooklyn Union Gas Co. d/b/a KeySpan Energy Delivery New York - Case 95-G-0761

Dear Secretary Deixler:

Enclosed for filing with the Commission is one copy each of the revised tariff leaves listed in Appendix "A" hereto, issued by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York ("KeySpan", "KED NY" or "Company") to become effective on October 1, 2001. This filing is being transmitted electronically. Five (5) copies of the tariff leaves and associated workpapers (contained in Appendices A -G) are being sent via Federal Express dispatch this day.

These leaves are being filed in compliance with the Commission's Opinion No. 96-12 issued September 25, 1996 in the above case (Opinion 96-26).[1] The enclosed leaves reflect tariff revisions

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1 *Brooklyn Union Gas Co.*, Case 95-G-0761, Opin. No. 96-26 (Sept. 25, 1996). By Opinion 96-26, the Commission approved the "Stipulation and Agreement Resolving Corporate Structure Issues and Establishing Multi-Year Rate Plan" ("Holding Company Agreement") among Brooklyn Union [now KED NY], the Staff of the Department of Public Service (Staff), the State Consumer Protection Board and the City of New York (collectively, "Signatory Parties"). The Holding Company Agreement, *inter alia*, permits Brooklyn Union to file new tariff leaves issued on June 1, 1997 (and each June 1 thereafter through June 1, 2001) (referred to as the June 1 Filing(s)). Holding Company Agreement at 8. On May 29, 1998, with the consummation of the business combination between Brooklyn Union and MarketSpan Corporation [now KeySpan Corporation] (comprising those components of the Long Island Lighting Company ("LILCO") not sold to the Long Island Power Authority), the "Stipulation and Agreement" among Brooklyn Union, LILCO, Staff and several other parties, approved by the Commission in its Opinion 98-9 issued April 14, 1998 in Case 97-M-0567 ("Combination Agreement"), supersedes portions of the Holding Company Agreement. Those portions of the Holding Company Agreement not superseded are contained in Appendix A to the Combination Agreement. The provisions authorizing the June 1 Filings were not superseded and are contained in that Appendix. All references to the Holding Company Agreement will be cited herein as "Holding Company Agreement, Appendix A at __."

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expressly contemplated by the Holding Company Agreement.

KeySpan is proposing the introduction of certain tariff fees as contemplated by Section V.C.9 of the Holding Company Agreement,[2] which permits the Company "to impose or adjust fees on a tariffed basis for various services either now performed for 'free,' or for which there already is a tariff charge." In accordance with the Holding Company Agreement, these proposed charges, as reflected in the attached workpapers, are new fees, reflect services currently performed for free, are "cost-based" and, therefore, should be deemed *prima facie* just and reasonable and permitted to take effect without suspension or postponement. The amount of each proposed fee is exclusive of applicable taxes.

The Company is proposing a nominal increase in the minimum charges applicable to Service Classification ("SC") Nos. 1A, 1B, 1B1, 2, 3, 4A, 4B, 16 and 17 - - pursuant to Section V.D.c of the Combination Agreement and V.C.12.c. of the Holding Company Agreement to recover the additional revenue deficiency caused by the increase in the number of eligible customers under KeySpan's low-income rates.

None of the proposed services will result in a degradation of customer service quality in general, or impair the level of service to those customers who do not receive these services. Specifically, the amended tariff leaves transmitted herewith reflect the following changes:

1. KeySpan proposes to impose a fee of $12.68 for unproductive field visit appointments. The fee would be imposed when the customer has made an appointment for non-safety related service and the Company has appeared at the appointed time, but is unable to provide the service requested because of the customer's culpability. For example, the fee would be imposed when the customer does not appear at the appointed time, or is unprepared or unable to provide access to the facilities necessary for the Company to complete the service requested. This initiative will hold the customer responsible, except in circumstances beyond the customer's control, for the cost of the unproductive non-safety related service appointment. The Company will call the customer on the day before the scheduled appointment to confirm or reschedule the appointment, as needed.

   The fee would not be applicable to appointments made under the Company's Premium Service Program, but is a compliment to that program. The Company will advise customers of this potential fee in the course of making the future day non-safety related service appointment and while describing the existing Service Guarantee

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[2] Holding Company Agreement, Appendix A at 18.

Program.[3]

The Company included an unproductive field visit fee in its June 1, 2000 filing. In its Order on Review of Rate Plan Filing in Case 95-G-0761 (issued and effective January 25, 2001), the Commission said, at p. 6 "[i]f or when KeySpan files a tariff amendment to establish an unproductive visit charge, the amendment should establish a process by which the company will call the customer before attempting to keep an appointment, either to confirm the appointment or to reschedule it if intervening events have made keeping it impossible. Moreover, a customer who is genuinely unable to commit to anything more definitive than best efforts to be available for a service visit on a given day or series of dates should not be considered to have made an appointment to which the charge would apply." The tariff amendment included herewith addresses the Commission's stated concerns. First, the Company undertakes to call the customer in advance of the appointment - - either to confirm it or reschedule it. Further, the initiative, as reflected in the tariff amendment, will not hold a customer responsible if the missed appointment is due to circumstances beyond the customer's control.

For the sake of administrative efficiency, the Company proposes that the Commission approve this fee in its order addressing this filing. However, the Company plans to implement this fee July 1, 2002. That time is required to complete the computer programming necessary for implementation. Since the Company's initial filing seeking to implement this initiative, additional programming resources have become dedicated to our New England conversion efforts and existing New York regulatory mandates - - i.e., EDI, billing choice, uniform bill and payment practices, etc. The Company will notify the Commission of the specific implementation date prior to that date. As demonstrated in the attached workpapers (Appendix B), this charge is cost-based. The proposed charge is reflected on the Revised Leaf No. 35 (Appendix A).

2. Effective October 1, 2001, KeySpan proposes to increase the minimum charge applicable to S.C. Nos. 1A, 1B, 1B1, 2, 3, 4A, 4B, 16 and 17 to recover the additional revenue deficiency caused by the increase in the number of eligible customers under the Company's low-income rates (S.C. Nos. 1AR and 1BR) from 47,000 to 52,000 customers, as provided for in Sections V.D.c. and V.D.b. of the

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[3] Under the Service Guarantee Program, the Company guarantees to keep all appointments made at the customer's request as well as special appointments the Company makes with the customer. If the Company does not keep an appointment within the time frame agreed upon, a refund will be credited to the customer's next bill. The refund will be $30.00 for residential customers and $60.00 for non-residential customers. The Service Guarantee Program does not apply to appointments made for the same day the customer requests service or if events beyond the Company's control, such as severe weather, prevent the Company from performing as planned. Revised Leaf No. 35 filed herewith also contains a housekeeping change to reflect the correct amount of the refunds - - $30.00 and $60.00 for residential and non-residential, respectively - - customers receive under the Company's Service Guarantee Program.

Combination Agreement. Under those sections, "the revenue deficiency caused by the low-income rate will be recovered through the minimum charges in all Brooklyn Union Core Service classes." And up to a maximum of 52,000 customers will be eligible to receive the low-income rate. Because the impact on affected customers in these classes is nominal (2-4 cents per bill), KeySpan requests a waiver of the Commission's regulations which require a bill impact study and a comparison of present and proposed rates. These proposed changes are embodied on Revised Leaf Nos. 140, 144, 152, 153, 159, 160, 163, 164, 167, 168, 171, 172, 301, 302, 303, 339 340, and 341. The associated workpapers are contained in Appendix C.

3. KeySpan proposes a "new account' segment to reflect the requirement that new residential customers receiving gas service under service classifications 1A(080) and 1B(010) and their transportation rate equivalents commence to pre-pay their minium bill during the first billing period following service unlock.[4] Prepayment of the minimum bill would not result in a new customer being charged any additional amounts by KeySpan.

This initiative is designed to reduce customer uncollectibles due to characteristics found in KED NY's service territory. The customer population for this area is highly transient; and many customers who move do so without paying their final bill. In 1998, for example, nearly one-third of KeySpan's customers vacated their premises within 12 months of commencing gas service, and almost half did so within 24 months of initiating service. Approximately 25% of customers leave their premises without notifying KeySpan, leaving unpaid utility bills and no forwarding address, effectively precluding successful collection efforts. Additionally, most of these customers are residential non-heating customers, which means the individual arrears are small, and that collection efforts are less cost-effective. These characteristics lead to the cost of uncollectibles being spread through gas rates to customers who pay their bills in full and on time. The proposal helps to ameliorate this inequity.

No provision in the Public Service Law (including the HEFPA provisions), the Transportation Corporations Law or the Commission's regulations explicitly or implicitly prohibits gas utilities from obtaining an advance payment of the minimum bill for service. Pre-payment of the minimum bill is consistent with HEFPA and the Commission's residential customer regulations. Such pre-payment is clearly distinguishable from a security deposit described under HEFPA and 16 NYCRR §11.12. Moreover, the telecommunications industry, which collects the basic exchange service in advance and which has security deposit regulations (16 NYCRR 609.9) nearly identical to those applicable to KED NY, provides ample precedent for such pre-payment. Pre-payment of the minimum bill is also consistent with practices

[4] The prepayment obligation would not apply to new accounts qualifying under the two low-income rate classes (SC Nos. 1AR and 1BR), nor to the introductory rate segment (SC No. 1BI).

in other businesses, including telephone and cable, (under 16 NYCRR 609.3(a)(4), the telephone company may make payment in advance for residential basic local exchange service a condition of service), under which a customer pays for the product or service at the time he initiates the relationship with the product or service provider and begins to receive the benefit of the product or service.

Section V.C.4 of the Holding Company Agreement contemplates various scenarios wherein rate segmentation is permitted (e.g. based upon consumption and end-use, sub segments of new customers, sub segments reflecting varying competitive fuel use opportunities). Section V.C.4 also contemplates KeySpan proposing segmentation and rates that fall outside of the guidelines contained in the various subsections to section V.C.4.[5] Since, in approving the Holding Company Agreement, the Commission also approved an "introductory rate segment" concept, which distinguishes between new and existing customers, KeySpan respectfully submits that a prepayment of the minimum charge for new residential accounts is consistent with the Holding Company Agreement.[6]

For the sake of administrative efficiency, the Company proposes that the Commission approve this initiative in its Order addressing this filing. However, the Company plans to implement this initiative July 1, 2002. That time is required to complete the computer programming necessary for implementation. The Company will notify the Commission of the specific implementation date prior to that date. The associated workpapers are contained in Appendix D. The proposed change is reflected on the Revised Leaves No.140, 144, 316 and 353. (Appendix A).

4. KeySpan proposes the initiation of a "new account" segment under which customers initiating service in S.C. Nos. 1A, 1B and 2 pay a minimum bill increase (over a 12-month period) of $2.55 per bi-monthly billing cycle or $1.27 per monthly billing cycle to account for the increased costs associated with initiating service. This temporary increase in the minimum charge for this new customer segment would be spread over six bi-monthly or 12 monthly billing cycles. The proposed fee reflects a blended, weighted average of those additional costs, which include physical field unlocks and clerical "records only" unlocks. After the initial 12-month period, the customers would pay the otherwise applicable minimum charge.

The Holding Company Agreement (section V.C.4) contemplates this type of rate

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[5] *See* Holding Company Agreement at V.C.4.b, V.C.4e, V.C.4f.

[6] The Company does not recover its cost to serve the small-volume residential non-heating customers in the minium charge, as the Commission has recognized in the past. *The Brooklyn Union Gas Co.*, Case 95-G-0761 Opin. No. 96-26 at 11, 20, 25, 31-32 (Sept. 25, 1996); *The Brooklyn Union Gas Go.*, Case 93-G-0941 Opin. No. 94-22 at 5, 12, 15, 16 (October 18, 1994).

segmentation for new customers. In approving the Holding Company Agreement, the Commission, over the objection of NYOHA, approved the "introductory rate segment" concept, which distinguishes between new and existing customers. *The Brooklyn Union Gas Co.*, Case 95-G-0761 Opin. No. 96-26 at 31-32 (Sept. 25, 1996). Additionally, the courts have expressly held that minimum bills do not constitute "service charges" prohibited by Public Service Law section 65(6).[7] Therefore, the Company respectfully submits that the increase in the minimum charge for new accounts is consistent with both the Holding Company Agreement and established legal principles.

Unlike a direct charge or "service fee," the proposed minimum charge for new customers is designed to recover from all new customers the average cost of unlocking services, rather than the actual cost for each customer. The proposed increase in the minimum charge applicable to new customers is a weighted average of the cost of physically unlocking meters that previously have been locked in order to initiate service (which involves making a service call to the premises), and the administrative cost of setting up the account for billing and service (which does not require a service call to the premises).

This averaging concept, by which all customers in a specified and rationally distinguished class pay the average costs of providing service to the class, whether or not the actual cost of providing service to the individual customer is higher or lower than the average cost, is an accepted principle of utility rate making, and clearly demonstrates that the temporary increase to the minimum charge does not resemble a directly charged "service fee" prohibited by section 65(6), in which the customer is charged the one-time cost of providing a particular service.

The Company's proposed increase in the minimum charge to a new customer segment differs from the seasonal re-connection fee struck down as a prohibited "service charge" in Kovarsky v. Brooklyn Union Gas Company, 279 N.Y.304 (1938). In Kovarsky, the prohibited charge was imposed on customers who requested termination of service for the summer months and then requested, within six months, re-connection of service for the same customer. Id. at 309-10. The charge in Kovarsky would have had to be paid whether or not the customer used any gas, and was therefore a prohibited "service charge." Kovarsky v. The Brooklyn Union Gas Company, 253 A.D. 635, 638 (A.D. 2d Dep't. 1938).

Conversely, the increase in the minimum charge for new customers proposed by the Company herein applies only to new customers. Further, as a part of the minimum

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[7] *See Mykolin v. Consolidated Edison Co. of New York*, 89 Misc.2d 193, 197 (Sup. Ct. N.Y. 1976) ("minimum charges do not come within the prohibition of subdivision 6 of section 65 . . . .").

charge, this charge is not in addition to the charge for actual gas consumption. When the amount of gas set forth in the minimum charge is reached, the minimum charge is absorbed into the customer's bill, whereas a service charge is not.

Further, as noted above in the discussion of the initiative to require a new customer segment to pre-pay the minimum charge, the Company's minimum charges are not reflective of the costs to serve. Given that fact, the minimal increase in the minimum charge proposed in this initiative should be approved.

For the sake of administrative efficiency, the Company proposes that the Commission approve this initiative in its Order addressing this filing. However, the Company plans to implement this initiative July 1, 2002. That time is required to complete the computer programming necessary for implementation. The Company will notify the Commission of the specific implementation date prior to that date. The associated workpapers are contained in Appendix E. The proposed change is reflected on Revised Leaves No. 141, 145, and 162 (Appendix A).

5. KeySpan proposes a reduction in the frequency of meter reads for customers taking service in SC Nos. 1A and 1AR and their transportation rate equivalents located in buildings with six or more dwelling units from bi-monthly reads to one read annually. That KeySpan might be proposing a change of this nature was expressly recognized in the Holding Company Agreement. Holding Company Agreement, subsection V.C.10(a) at 55-56 ("During the term of the Rate Plan, Brooklyn Union will be permitted to propose other variable service levels to customers in selected service classes and/or segments. These service levels may relate to items such as meter reading method and frequency . . .").

The overwhelming number of these customers use gas for cooking only; hence, there is no significant variation in consumption levels from meter read to meter read, nor is the size of each bi-monthly bill large in comparison with bills incurred by heating service customers.[8] Accordingly, the Company believes that a significant efficiency gain would result from the reduction in the number of reads from six to one annually, and that this change would have no negative impact on affected customers. Customers still will receive a bi-monthly bill, the amount of which is based on an analysis of the customer's prior usage pattern. After the annual meter reading is accomplished, the customer will receive a bill that will include any difference between billed consumption and actual consumption during the annual period. Customers will be permitted to take their own reads (and either phone in the reads or submit them by card or over the internet), if they so desire, and the customer's next bill will include

[8] The average bi-monthly bill for a customer residing in a building with six or more dwelling units and taking service under S.C. Nos. 1A and 1AR is approximately $21.14 plus the applicable gas adjustment and Revenue Tax Surcharge.

the difference between actual and estimated consumption from the date of the last actual read. Thus the change in the frequency of reading meters for this subclass will have no adverse impact on the safety, reliability or overall quality of the Company's service to these customers.

Section 39 of the Public Service Law contains no language that could be read to prohibit the proposal for annual readings. In fact, a clear reading of the statute leads to the conclusion that the Company could bill and read meters at *any* interval approved by the Commission. Section 39 (1) and (2) read as follows:

> 39. Meter reading and estimated bills
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> 6. A utility corporation or municipality may, in accordance with such requirements as the commission may impose by regulation, render an estimated bill for any billing period if: (a) the procedure used by such utility or municipality for calculation estimated bills has been approved by the commission, and the bill clearly indicates that it is based on an estimated reading and (b) the utility or municipality has made reasonable effort to obtain an actual meter reading or (c) circumstances beyond the control of the utility or municipality made an actual reading of the meter extremely difficult or (d) circumstances indicate a reported reading is likely to be erroneous or (e) *an estimated reading is prescribed or authorized by the commission for a billing period between periods when actual meter readings are scheduled* or for seasonal or short term customers.
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> 7. Where a utility corporation or municipality fails to gain access to a meter for a period of four months or two billing periods, whichever is greater, the corporation or municipality shall take reasonable actions to obtain an actual meter reading. Such additional actions may include, but not be limited to: making an appointment with the customer or such other person who controls access to the meter for a reading at a time other than within normal business hours, *offering the customer the opportunity to phone in a meter reading, or providing a card to the customer on which he or she may record the reading and mail it to the utility or municipality.*

Emphasis added. Subsection 1 specifies four circumstances in which estimated bills are appropriate. First, the supplier of service must have made a reasonable effort to secure an actual reading (clause (b)). Second, circumstances beyond the supplier's control could have made an actual reading "extremely difficult" (clause (c)). Third, a reported reading is "likely to be erroneous" (clause (d)). Finally, the Commission could prescribe or authorize estimated billings between scheduled actual readings

(clause (e)). Subsection 2 follows by stating that, if the supplier does not obtain access to a meter for two billing periods or four months, whichever is greater, the supplier must take additional steps to obtain an actual reading.

The Company proposal here falls under the terms of section 39(1)(e) - - the company seeks authorization to render estimated bills between scheduled actual meter readings, which will take place once each year.[9] Hence, by approving the Company's proposal, the Commission would be authorizing estimated readings for the affected customers between periods (*viz*., one year) when actual meter readings are scheduled. Moreover, such authorization would in no way result in a violation of subsection 39(2), because that subsection requires only that the utility take "reasonable actions to obtain an actual meter reading," which expressly includes "offering the customer the opportunity to phone in a meter reading, or providing a card to the customer on which he or she may record the reading and mail it to the utility or municipality." This is precisely what the Company proposed.

Thus, by approving the Company's proposal, the Commission would, at the same time, be (1) authorizing estimated reads for billing periods between periods when actual meter readings are scheduled, satisfying the requirements of subsection 39(1), and (2) determining that Brooklyn Union's proposed method of obtaining actual reads is reasonable, satisfying the requirements of subsection 39(2). Hence, the PSL stands as no impediment to the Commission's approval of the Company's proposal.

The associated workpapers are contained in Appendix F. Submitted herewith, (Appendix G), pursuant to the Commission's request is testimony on the nature of the non-heating multiple dwelling customers' usage and, to the extent possible, bill impacts under the proposal should a customer install a gas dryer without notifying the Company or ignore the Company's safety admonitions and distress heat with their gas oven. The Company suggests that neither of these scenarios are common and that they should not determine the outcome of this proposal. Furthermore, the Company has an obligation to offer and make deferred payment agreements to customers, which would allow any customers who have ignored the Company's notice and safety rules and then cannot pay the balance due at the end of the annual billing period to pay in installments any difference between their billed and actual gas usage.

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[9] The company also proposed a methodology for estimating bills to these customers (*viz.*, one sixth of an estimated annual amount based on the prior year’s consumption and current rates), thus satisfying the requirements of clause (a) of subsection 39(1).

Additionally, the Commission's past suggestion that KeySpan make any such annual meter reading proposal optional (Case 95-G-0761, Order on Review of Rate Plan Filing, issued and effective September 22, 1997 at 19) effectively eviscerates any savings this proposal would provide. The cost savings from this proposal are predicated on the permanent elimination of 5 out of 6 physical trips to these 300,000 premises in order to physically read the meters. An "opt out" or "opt in" would not only reduce these identified savings, but could also create additional programming and meter reading costs. A scenario under which customers could "opt out" of this program would destroy the concept of skipping entire buildings. in the meter reading routes and therefore destroy the savings projected for this initiative.

KeySpan proposes that the Commission approve this initiative in its Order addressing this filing. However, the Company plans to implement this initiative no later than July 1, 2003. That time is required to complete the computer programming necessary for implementation. The tariff leaves will take effect October 1, 2001, and the Company will notify the Commission of the specific implementation date prior to that time. The proposed change is reflected in the Revised Leaves No.141, 145, 316 and 353. (Appendix A).

Copies of this transmittal letter and the enclosures are being served this day by either hand delivery or U.S. mail on all parties entering an appearance, as reflected in the appearance list contained in Opinion 96-26, and Federal Express dispatch on Administrative Law Judge Garlin and Judith Chomycz, Tariff Administrator - Electric Division. As provided in subsection VI.B.3.c of the Holding Company Agreement, this letter also provides notice that a technical conference of the parties regarding the filing will be held on June 29, 2001, beginning at 10:30 a.m. at the Commission's Downstate Offices at Once Penn Plaza in New York City. The Company hereby requests that interested parties confirm their attendance no later than June 22, 2001 by calling Dawn Herrity at (718) 403-2975.

In addition, please update the service list by changing the entry for the Company to read as follows:

M. Margaret Fabic
Cynthia R. Clark
KeySpan Energy
One MetroTech Center
Brooklyn, New York 11201

Also transmitted herewith is a form of notice under the State Administrative Procedure Act related to this filing.

If you have any questions concerning this filing, please contact Nancy Cianflone at (718) 403-2505.

Respectfully Submitted,

The Brooklyn Union Gas company
d/b/a KeySpan Energy Delivery New York

CRC:ljm

Encls.
cc(w/encls.): Hon. Robert Garlin
Administrative Law Judge

Saul A. Rigberg, Esq.
Staff Counsel

All Parties (on July 1, 1998 service list)

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