

**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.)	
)	

**UNITED STATES’S SUBMISSION OF DECLARATION OF OLIVER M. RICHARD IN
SUPPORT OF ITS MOTION TO ENTER FINAL JUDGMENT**

Pursuant to the Court’s request at the October 12, 2010 status conference, the United States submits the attached declaration of Dr. Oliver M. Richard in support of its Motion to Enter the Final Judgment (Dkt. #25) in this case. Dr. Richard’s declaration explains the calculation of net payments that KeySpan Corporation (“KeySpan”) received under the terms of its January 18, 2006 financial derivative agreement with a financial services company relating to the New York City Installed Capacity Market (the “Swap”). Dr. Richard’s calculation results in net Swap revenues to KeySpan of \$48,960,000 during the Swap’s twenty-four month term from May 2006 through April 2008. Counsel for the New York State Public Service Commission has reviewed this calculation and now concurs in the determination of KeySpan’s net Swap revenues. Counsel for KeySpan also concurs in the calculation, *see* 10/12/10 Tr. at 19-20.

As the United States stated at the conference, the net revenues KeySpan received under the Swap (as opposed to the revenues it received in the capacity auctions) are the appropriate

measure of KeySpan's ill-gotten gains from the antitrust violation alleged in the Complaint. The Swap likely did not result in KeySpan obtaining higher auction revenues than it otherwise would have. Indeed, the gravamen of the Complaint is that, in the absence of the Swap, KeySpan would have adopted a competitive bidding strategy because competitive bidding offered KeySpan a substantial likelihood (but not a certainty) of obtaining more auction revenues than bidding at its cap. Although auction prices would be lower, KeySpan would be more than compensated for the lower price through higher volume sales of its capacity. If this were not a sufficiently likely outcome, the Swap would not have had the clear tendency to alter KeySpan's bidding in the auctions, as alleged in the Complaint, and KeySpan would simply have bid its cap in the but-for world. KeySpan entered the Swap to avoid the risks of competitive bidding and the revenue decline of bidding the cap. Thus, KeySpan's \$48.9 million in net Swap revenues essentially reflects the maximum ill-gotten gains from its anticompetitive scheme.

Dated: October 26, 2010

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

/s/

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