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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27234]

### Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

September 21, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 16, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 16, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### KeySpan Corporation, et al. (70-9699)

KeySpan Corporation ("KeySpan"), a combination gas and electric utility holding company claiming exemption from registration under section 3(a)(1) of the Act by rule 2, located at One MetroTech Center, Brooklyn, New York 11201; KeySpan's utility subsidiaries: The Brooklyn Union Gas Company d/b/a/ KeySpan Energy Delivery New York ("KeySpan New York"), located at One MetroTech Center, Brooklyn, New York 11201; KeySpan Gas East Corporation d/b/a/ KeySpan Energy Delivery Long

Island ("KeySpan Long Island"); and KeySpan Generation LLC ("KeySpan Generation"), each located at 175 East Old Country Road, Hicksville, New York 11801; KeySpan's direct nonutility subsidiaries: ACJ Acquisition LLC ("ACJ"); KeySpan Energy Corporation; KeySpan Operating Services LLC; KeySpan Exploration & Production LLC; KeySpan Technologies Inc.; KeySpan MHK, Inc., all located at One MetroTech Center, Brooklyn, New York 11201; KeySpan Corporate Services LLC ("KCS"); KeySpan Utility Services LLC ("KUS"); Marquez Development Corp.; Island Energy Services Company, Inc.; LILCO Energy Systems, Inc., all located at 175 East Old Country Road, Hicksville, New York 11801; KeySpan-Ravenswood Inc.; KeySpan-Ravenswood Services Corp., each located at 38-54 Vernon Boulevard, Long Island City, New York 11101; KeySpan Services, Inc., located at Octagon 10 Office Building, 1719 Route 10, Suite 108, Parsippany, New Jersey 07054; KeySpan Energy Trading Services LLC, located at 100 East Old Country Road, Hicksville, New York 11801; and KeySpan Energy Supply LLC, located at 14-04 111th Street, College Point, New York 11356; and their respective nonutility subsidiaries; Eastern Enterprises ("Eastern"), a gas utility holding company claiming exemption from registration under section 3(a)(1) of the Act by rule 2, located at 9 Riverside Road, Weston, Massachusetts 02493; Eastern's gas utility subsidiaries: Boston Gas Company ("Boston Gas"); Essex Gas Company ("Essex Gas"); and Colonial Gas Company ("Colonial Gas"), all located at One Beacon Street, Boston, Massachusetts 02108; Eastern's direct nonutility subsidiaries: Boston Gas Services, Inc.; EE-AEM Company, Inc.; EE Acquisition Company, Inc.; EEG Acquisition Company, Inc.; Eastern Associated Capital Corp.; Eastern Associated Securities Corp.; Eastern Energy Systems Corp.; Eastern Rivermoor Company, Inc.; Eastern Urban Services, Inc.; Mystic Steamship Corporation; PCC Land Company, Inc.; Philadelphia Coke Co., Inc.; Water Products Group Incorporated; Western Associated Energy Corp., all located at 9 Riverside Road, Weston Massachusetts 02493; Midland Enterprises Inc., located at 300 Pike Street, Cincinnati, Ohio 45202; ServiceEdge Partners, Inc.; and AMR Data Corporation, each located at 62 Second Avenue, Burlington, Massachusetts 01803; and their respective subsidiaries; and EnergyNorth, Inc. ("EnergyNorth"), a gas utility holding company claiming exemption from registration under

section 3(a)(1) of the Act by rule 2, located at 1260 Elm Street, P.O. Box 329, Manchester, New Hampshire 03105; EnergyNorth's gas utility subsidiary, EnergyNorth Natural Gas, Inc. ("ENGI"), also located at 1260 Elm Street, P.O. Box 329, Manchester, New Hampshire 03105; EnergyNorth's direct nonutility subsidiaries: Broken Bridge Corporation; EnergyNorth Realty, Inc., each located at 1260 Elm Street, P.O. Box 329, Manchester, New Hampshire 03105; EnergyNorth Propane, Inc., Located at 75 Regional Drive, Concord, New Hampshire 03301; and EnergyNorth Mechanicals, Inc., located at 25 Depot Street, Manchester, Massachusetts 03101; and their respective subsidiaries (together, "Applicants"),<sup>1</sup> have filed an application-declaration under sections 6(a), 7, 9(a)(1), 10, 12(b), 12(c), 13(b), 32, and 33 of the Act, and rules 45, 46, 53, 54, and 80-92 under the Act.

In the Merger U-1, KeySpan and its subsidiary, ACJ, seek approvals relating to the proposed acquisition by KeySpan of all of the issued and outstanding common stock of Eastern ("Merger").<sup>2</sup> A notice of the Merger U-1 was issued on July 18, 2000 (HCAR No. 27201). Eastern also has previously filed an application-declaration with the Commission under the Act seeking approvals relating to the proposed acquisition ("Eastern/EnergyNorth Merger U-1") by Eastern of all of the outstanding common shares of EnergyNorth ("Eastern/EnergyNorth Merger"). A notice of the Eastern/EnergyNorth Merger U-1 was issued on July 18, 2000 (HCAR No. 27201). For purposes of this application-declaration, KeySpan has assumed that the Eastern/EnergyNorth Merger will be approved concurrently with the Merger. However, KeySpan states that its request for approval of the Merger is not contingent on Commission approval of the Eastern/EnergyNorth Merger, and further states that the same request applies to this application-declaration.<sup>3</sup>

Following the consummation of the Mergers, KeySpan will have seven utility subsidiaries: KeySpan New York; KeySpan Long Island; KeySpan Generation; Boston Gas; Essex Gas; Colonial Gas; and ENGI (collectively,

<sup>1</sup> The indirect nonutility subsidiaries of KeySpan, Eastern, and EnergyNorth are set forth in the application-declaration previously filed by KeySpan and ACJ seeking approvals relating to KeySpan's proposed acquisition of Eastern ("Merger U-1").

<sup>2</sup> KeySpan requests that the Commission review and rule on this application-declaration contemporaneously with the Merger U-1.

<sup>3</sup> The Merger and the Eastern/EnergyNorth Merger are referred to in this notice collectively as "Mergers."

“Utility Subsidiaries”). In addition, KeySpan states that KeySpan Energy Corporation (“KEC”), Eastern and EnergyNorth (collectively, “Intermediate Holding Companies”) will remain in existence after the Mergers as first tier public utility holding company subsidiaries of KeySpan.<sup>4</sup>

Each of the entities that will be directly and indirectly owned subsidiaries of KeySpan upon consummation of the transactions described in the Merger U-1 is referred to individually as a “Subsidiary” and collectively as “Subsidiaries.”<sup>5</sup> All of KeySpan’s direct and indirect Subsidiaries, other than the Utility Subsidiaries and the Intermediate Holding Companies, shall be referred to as “Nonutility Subsidiaries.”

Applicants propose to enter into, or to maintain, numerous types of financing transactions to meet KeySpan’s capital requirements immediately following the Mergers and to plan future financing. Applicants request authorization to engage in the proposed financing transactions for the period beginning with the effective date of the Commission’s Order in this matter and continuing for a period of three years from the date of that Order (“Authorization Period”). In addition, Applicants request the Commission to authorize various proposed intrasystem transactions. Applicants further request that the Commission reserve jurisdiction over certain proposed investments in nonutility businesses, as described below.

Financings by each Applicant will be subject to the following conditions (“Financing Conditions”): (1) during the Authorization Period, KeySpan’s common equity will be at least 30% of its consolidated capitalization, and each Utility Subsidiary’s common equity will be at least 30% of its capitalization; (2) any long-term debt issued to KeySpan to unaffiliated parties under the authority requested in this application-declaration will be rated or will meet the qualifications for being rated investment grade by a nationally recognized statistical rating organization; (3) the effective cost of money on long-term debt financings will not exceed 500 basis points over comparable term U.S. Treasury securities and the effective cost of money on short-term debt financings will not exceed 500 basis points over the comparable term

London Interbank Offered Rate (“LIBOR”); (4) the effective cost of money on preferred stock and other fixed-income oriented securities will not exceed 500 basis points over LIBOR; (5) the maturity of indebtedness will not exceed 50 years; (6) the underwriting fees, commissions, and other similar remuneration paid in connection with the non-competitive issue, sale or distribution of a security will not exceed an amount or percentage of the principal or total amount of the security being issued that would be charged to other companies with a similar credit rating and credit profile in a comparable arm’s-length transaction; and (7) KeySpan’s “aggregate investment” in exempt wholesale generator (“EWGs”) and foreign utility companies (“FUCOs”), as that term is defined in rule 53 under the Act, will not exceed an amount equal to 250% of the consolidated retained earnings of KeySpan after giving effect to the accounting adjustments required in connection with the Mergers.

The proceeds from the financings proposed in this application-declaration will be used for lawful corporate purposes, including: (1) Financing investments by and capital expenditures of KeySpan and its Subsidiaries; (2) the repayment, redemption, refunding or purchase by KeySpan or any Subsidiary of any of its own securities under rule 42 under the Act; and (3) financing working capital requirements of KeySpan and its Subsidiaries.

#### *I. Existing Financing Arrangements*

KeySpan requests Commission authorization to maintain in effect through the Authorization Period all existing financing arrangements of KeySpan and its Subsidiaries as of the date of the completion of the Mergers,<sup>6</sup> as well as any additional financing arrangements entered into before completion of the Mergers,<sup>7</sup> and to amend, renew, extend, supplement and/or replace these arrangements (“Refinancings”). Any Refinancing that occurs after completion of the Mergers and that is subject to Commission approval under the Act will comply with the Financing Conditions and,

<sup>6</sup> KeySpan estimates its existing financings, which consist of promissory notes, preferred stock, and credit facilities, to be approximately \$1.4 billion. The Utility Subsidiaries presently have approximately \$1.8 billion of debt, preferred stock, and capital leases. The Nonutility Subsidiaries presently have outstanding debt and capital leases totaling approximately \$550 million.

<sup>7</sup> KeySpan’s additional financing arrangements before completion of the Merger will include approximately \$2.2 billion necessary for acquisition financing related to the Mergers (“Merger Financing”).

absent prior Commission approval, will not: (1) Provide for an increase in the aggregate amount of indebtedness incurred; or (2) provide for a final maturity date that is beyond the Authorization Period.<sup>8</sup> The total of all outstanding securities issued by KeySpan under any Refinancing, together with the additional equity and debt financing authority requested by KeySpan in this application-declaration, will not exceed \$5.1 billion during the Authorization Period.<sup>9</sup>

#### *II. KeySpan External Financing*

##### *A. Common and Preferred Stock*

KeySpan proposes, through the Authorization Period, to issue common stock and preferred stock in amounts that, when combined with KeySpan’s proposed additional debt and convertible securities described below, will not exceed \$1.5 billion outstanding at any one time (“Additional Financing Amount”).<sup>10</sup> All common stock sales by KeySpan will be through underwritten public offerings, in private placements or in exchange for securities or assets being acquired from other companies, provided that the Commission has authorized the acquisition of these equity securities or assets in a separate proceeding, or that acquisition is exempt under the Act or the rules under the Act.<sup>11</sup> Preferred stock or other types of preferred or equity-linked securities may be issued by KeySpan in one or more series with rights, preferences, and priorities to be designated by KeySpan’s board of directors. The dividend rate on any series of preferred securities issued by KeySpan under this authority would comply with the Financing Conditions.

##### *B. Debt Financings*

KeySpan proposes to issue long-term and short-term debt during the Authorization Period in amounts that, when combined with the equity

<sup>8</sup> KeySpan states that, under certain circumstances, it may be required to support its obligations under existing promissory notes by obtaining letters of credit. Accordingly, KeySpan also seeks Commission approval to obtain any letters of credit required under these notes.

<sup>9</sup> KeySpan states that it developed the aggregate amount of \$5.1 billion by adding together the amount required for Merger Financing (approximately \$2.2 billion), the amount of its existing financing (approximately \$1.4 billion), and the amount of its proposed additional financing (\$1.5 billion).

<sup>10</sup> This aggregate amount does not include any existing financing or Refinancing described in Section I of this notice.

<sup>11</sup> KeySpan also seeks authority to issue common stock in consideration for an acquisition by KeySpan or a Nonutility Subsidiary of securities or assets of a business, the acquisition of which has been approved by the Commission in this proceeding or is exempt under the Act of the rules under the Act.

<sup>4</sup> However, KeySpan states that EnergyNorth will be eliminated as an intermediate holding company as soon as practicable after the Merger is completed.

<sup>5</sup> Applicants state that the terms “Subsidiaries” shall also include entities that become subsidiaries of KeySpan after consummation of the Merger.

financings described above, will not exceed \$1.5 billion outstanding at any one time. The long-term debt securities would comply with the Financing Conditions and may include various types of debt securities to be issued under an indenture to be entered into between KeySpan and the Chase Manhattan Bank, as trustee ("KeySpan Indenture"). KeySpan states that any securities issued under the KeySpan Indenture, or under an exemption from the registration requirements of the Securities Act of 1933, as amended ("1933 Act"), will be unsecured and unsubordinated obligations and will rank equally with all other unsecured and unsubordinated debt of KeySpan.<sup>12</sup>

KeySpan's proposed additional short-term debt would include, but would not be limited to, institutional borrowings, commercial paper (including back-up short-term credit facilities), and bid notes. KeySpan states that the proposed short-term debt will be unsecured and will be issued in accordance with the Financing Conditions.<sup>13</sup> KeySpan states that it may use the proceeds of any short-term debt issuance to refund pre-Merger short-term debt and Merger-related debt, and to provide financing for general corporate purposes, working capital requirements, and Subsidiary capital expenditures until long-term financing can be obtained.

### C. Guarantees

Following the Mergers, KeySpan requests authority during the Authorization Period to enter into guarantees, letters of credit, expense agreements and other forms of credit support ("Guarantees") with respect to the payment and performance obligations of the Subsidiaries in an aggregate principal amount not to exceed \$2 billion outstanding at any one time, not including obligations exempt in accordance with rule 45 under the Act. KeySpan states that this limit on the aggregate principal amount of Guarantees is separate from the amount applicable to its proposed debt and equity financing, and is in addition to its existing Guarantees.<sup>14</sup> KeySpan

further seeks authority to maintain in effect and to amend, renew, extend, and/or replace all Guarantees existing at the time of the Mergers.

### III. Subsidiary Financing

#### A. Utility and Nonutility Subsidiaries

The Utility Subsidiaries request authority to issue and sell, during the Authorization Period, additional debt securities with maturities of one year or less, up to the following aggregate principal amounts ("Additional Utility Subsidiary Financing Amounts") and in accordance with the Financing Conditions:

Utility subsidiary	Aggregate principal amount (\$ millions)
KeySpan New York .....	\$250
KeySpan Long Island .....	185
KeySpan Generation .....	50
Boston Gas .....	150
Colonial Gas .....	75
Essex Gas .....	20
ENGI .....	35
Total .....	765

#### B. Special-Purpose Subsidiaries

The Applicants seek Commission approval to acquire the equity securities of one or more special-purpose subsidiaries ("Financing Subsidiaries") organized solely to facilitate a financing. Applicants seek authority for these Financing Subsidiaries to issue to third parties income preferred securities or other securities to the extent not exempt under the Act.<sup>15</sup> In addition, authority is requested for: (1) The issuance of debentures or other evidences of indebtedness by any of the Subsidiaries to a Financing Subsidiary in return for the proceeds of the financing; (2) the acquisition by any of the Subsidiaries of voting interests or equity securities issued by a Financing Subsidiary to establish the Subsidiary's ownership of the Financing Subsidiary; and (3) the guaranty by KeySpan of a Financing Subsidiary's payment and performance obligations. Each of the Subsidiaries also requests authority to enter into an expense agreement with its respective Financing Subsidiary, under which it would agree to pay all expenses of the Financing Subsidiary.

KeySpan and its Subsidiaries also seek authority to invest in one or more

Subsidiaries ("Intermediate Subsidiaries") that would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more EWGs or FUCOs, as defined in sections 32 and 33, respectively, of the Act, "energy-related" companies as defined in rule 58 under the Act ("Rule 58 Subsidiaries"), exempt telecommunications companies within the meaning of section 34 of the Act ("ETCs"), or other Nonutility Subsidiaries authorized by order of the Commission. KeySpan states that Intermediate Subsidiaries also may engage in development and administrative activities relating to these EWGs, FUCOs, Rule 58 Subsidiaries, and other Nonutility Subsidiaries, and requests authority for Intermediate Subsidiaries to provide management, administrative, and other services to these entities.<sup>16</sup>

KeySpan further requests that the Commission reserve jurisdiction over the acquisition, directly or indirectly, of the securities of one or more new Subsidiaries ("New Subsidiaries"), pending completion of the record. These New Subsidiaries would be organized exclusively for the purpose of engaging in one or more of the activities in which any of KeySpan's existing Nonutility Subsidiaries is engaged at the effective time of the Mergers.

Investments in Intermediate Subsidiaries of New Subsidiaries may take the form of any combination of the following: (1) Purchase of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of equity interests; (2) capital contributions; (3) open account advances with or without interest; (4) loans; and (5) guarantees issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries or New Subsidiaries. In addition, KeySpan requests authority to consolidate or otherwise reorganize its ownership interests in existing and future Nonutility Subsidiaries under one or more direct or indirect Intermediate Subsidiaries. Funds for any direct or indirect investment in any Intermediate Subsidiaries or New Subsidiaries will be derived from (1) financings authorized in this proceeding; (2) any appropriate future debt or equity securities issuance authorization from the Commission; and (3) other available cash resources, including proceeds of securities sales by

<sup>12</sup> KeySpan states that maturity, interest rates, redemption provisions, sinking fund terms, and other terms of the proposed long-term debt securities, medium-term notes, and institutional debt would be determined by KeySpan at the time of issuance.

<sup>13</sup> KeySpan states that it presently issues commercial paper to accredited investors, as that term is defined in the 1933 Act, and that such issuances are exempt under section 4(2) of the 1933 Act. KeySpan anticipates that future issuances of commercial paper also will be exempt under the 1933 Act.

<sup>14</sup> KeySpan currently has approximately \$1.3 billion in Guarantees outstanding, which are expected to remain in place following the Merger.

<sup>15</sup> Any amounts issued to third parties by these Financing Subsidiaries under this authorization will be included in the overall financing limitation applicable to the immediate parent of that Financing Subsidiary. However, the underlying intrasystem mirror debt and parent guaranty shall not be included in that limitation.

<sup>16</sup> Applicants state that these services may be rendered at fair market prices to the extent that they qualify for any exceptions from the "at cost" standards of the Act requested by KeySpan in this application-declaration.

a Nonutility Subsidiary under rule 52. To the extent that KeySpan provides funds or issues guarantees directly or indirectly to support the obligations of an Intermediate Subsidiary which are incurred for the purpose of making an investment in any EWG or FUCO or a Rule 58 Subsidiary, the amount of these funds or guarantees will be included in KeySpan's "aggregate investment" in those entities, as calculated in accordance with rule 53 or rule 58 under the Act, as applicable.

#### IV. EWG and FUCO Financing

Following the Mergers, KeySpan seeks authority to finance the acquisition of EWGs and FUCOs, either directly or indirectly through intermediate companies, partnerships or other corporate entities during the Authorization Period. KeySpan further requests that the Commission authorize KeySpan to invest up to an amount equal to 250% of the consolidated retained earnings of KeySpan in EWGs and FUCOs. Applicants state that KeySpan's aggregate investment in EWGs and FUCOs as of September 11, 2000 was approximately \$690 million, and that KeySpan will have an aggregate investment of 130.74% of its retained earnings in EWGs and FUCOs as of the date the Merger is completed.<sup>17</sup> KeySpan further states that it currently plans to invest in two additional EWGs and that this investment, if consummated, would bring KeySpan's total aggregate investment to 227.5% of retained earnings.

#### V. Other Proposed Financing Transactions

##### A. KeySpan System Money Pools

KeySpan and the Utility Subsidiaries propose to establish a utility money pool ("Utility Money Pool"). The Utility Subsidiaries also request authorization to make unsecured short-term borrowings from the Utility Money Pool, contribute surplus funds to the Utility Money Pool, and lend and extend credit to (and acquire promissory notes from) one another through the Utility Money Pool. KeySpan may invest in, but not borrow from, the Money Pool.<sup>18</sup> Each of the Utility Subsidiaries may borrow from the Utility Money Pool up to its respective Additional Utility Subsidiary

Financing Amount at any one time outstanding.

In addition, KeySpan and the Nonutility Subsidiaries request authorization to establish a nonutility money pool ("Nonutility Money Pool," and collectively, "Money Pools"). Applicants state that rule 52 exempts the Nonutility Money Pool activities of the Nonutility Subsidiaries from the Act's prior approval requirements.

KeySpan requests authority to contribute surplus funds and to lend and extend credit to: (1) The Utility Subsidiaries through the Utility Money Pool; and (2) the Nonutility Subsidiaries through the Nonutility Money Pool. Funds made available by KeySpan for loans through the Money Pools will be made available first for loans through the Utility Money Pool and then for loans through the Nonutility Money Pool.

Funds not required by the Utility Money Pool to make loans (with the exception of funds required to satisfy the Utility Money Pool's liquidity requirements) would ordinarily be invested in one or more short-term investments, including: (1) Interest-bearing accounts with banks; (2) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities, including obligations under repurchase agreements; (3) obligations issued or guaranteed by any state or political subdivision, provided that the obligations are rated not less than "A" by a nationally recognized rating agency; (4) commercial paper rated not less than "A-1" or "P-1" or their equivalent by a nationally recognized rating agency; (5) money market funds; (6) bank certificates of deposit; (7) Eurodollar funds; and (8) other investments that are permitted by section 9(c) of the Act and rule 40 under the Act.

KCS will administer the Money Pool on a "at cost" basis and will maintain separate records for each money pool. Surplus funds of the Money Pools may be combined in common short-term investments, but KCS will maintain separate records of these funds. Applicants request that the Commission reserve jurisdiction over the participation by future companies formed or acquired by KeySpan in the relevant money pool, until a specific post-effective amendment is filed that names the Subsidiary to be added as a participant in that money pool.

##### B. Hedging Transactions

KeySpan and, to the extent not exempt under rule 52, the Subsidiaries request authority to continue existing, and to enter into additional interest rate

hedging transactions with respect to existing indebtedness ("Interest Rate Hedges"), subject to certain limitations and restrictions, in order to reduce or manage interest rate costs. Applicants state the Interest Rate Hedges would involve the use of financial instruments commonly used in today's capital markets, including interest rate sways, caps, collars, floors, and structured notes, or transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations.

In addition, the Applicants request authority to continue existing, and to enter into additional interest rate hedging transactions with respect to anticipated debt offerings, subject to certain limitations and restrictions ("Anticipatory Hedges"). Anticipatory Hedges would be utilized to fix and/or limit the interest rate risk associated with any new issuance through the use of various derivative or cash transactions, including, but not limited to, structured notes, caps and collars.

##### C. Changes in Capital Stock of Subsidiaries and Payment of Dividends Out of Capital or Unearned Surplus

Applicants request authority to change the terms of any wholly owned Subsidiary's authorized capital stock capitalization by an amount deemed appropriate by KeySpan or other immediate parent company. This authority would allow a Subsidiary to change the par value, or change between par and no-par stock, without additional Commission approval. Any action by a Utility Subsidiary would be subject to and would only be taken upon receipt of necessary approvals by the state commission in the state or states where the Utility Subsidiary is incorporated and doing business.

The Applicants will account for the Mergers using the purchase method of accounting. Under this method of accounting, the Mergers will give rise to a substantial level of goodwill which, in accordance with the Commission's Staff Accounting Bulletin No. 54, Topic 5J ("Staff Accounting Bulletin"), will be "pushed down" to Eastern, EnergyNorth, and their respective subsidiaries and reflected as additional paid-in capital in their financial statements. In addition, as a result of the push-down of the goodwill, the retained earnings of Eastern and EnergyNorth and their subsidiaries will be effectively set to zero as if they were new companies, with the balance being reflected in paid-in capital. Accordingly, the Applicants request authorization to pay dividends out of the additional paid-in capital accounts of Eastern, EnergyNorth, Midland

<sup>17</sup> KeySpan's consolidated retained earnings as of June 30, 2000 totaled approximately \$528 million, which reflects the effects of an earlier merger consummated on May 28, 1999. KeySpan's pro forma combined consolidated retained earnings after giving effect to the Mergers will be substantially the same.

<sup>18</sup> KeySpan New York and KeySpan Long Island will be limited to borrowing from the Money Pool only.

Enterprises, Inc. ("Midland"), and Transgas, Inc. ("Transgas"),<sup>19</sup> up to the amount of their respective retained earnings immediately prior to the Mergers and out of earnings before the amortization of the goodwill after the Mergers.

Applicants state that there may be situations in which one or more Nonutility Subsidiaries will have unrestricted cash available for distribution in excess of current and retained earnings. Accordingly, Applicants propose that the direct and indirect Nonutility Subsidiaries be permitted to pay dividends from time to time out of capital and unearned surplus through the Authorization Period, to the extent permitted under applicable laws, and to acquire, retire and redeem securities that the Nonutility Subsidiaries have issued to any associate company, any affiliate, or any affiliate of an associate company. Without further approval of the Commission, no Nonutility Subsidiary will declare or pay any dividend out of capital or unearned surplus if that Nonutility Subsidiary derives any material part of its revenues from the sale of goods, services, electricity or natural gas to any of the Utility Subsidiaries.

#### D. Foreign Gas Related Investments

KeySpan states that it currently holds interests in Nonutility Subsidiaries that directly or indirectly engage in activities in Canada which involve the supply of natural gas, including exploration, development, production, marketing, or other activities within the meaning of the Gas Related Activities Act of 1990 ("GRAA"). KeySpan expects that it may expand its investments in companies engaged in Canadian GRAA activities ("GRAA Canadian Subsidiaries"). Therefore, Applicants request that the Commission reserve jurisdiction over additional investments by existing Nonutility Subsidiaries in existing partially owned GRAA Canadian Subsidiaries.

#### VI. Benefit and Dividend Reinvestment Plans

KeySpan seeks authorization to issue and sell its common stock from time to time, during the Authorization Period and subject to the Additional Financing Amount, under its benefit plans and dividend reinvestment plan.<sup>20</sup> Shares of

KeySpan common stock for use under these plans may be either newly issued shares, treasury shares, or shares purchased in the open market.

Applicants also seek authority for The Houston Exploration Company ("Houston Exploration"), a wholly owned subsidiary of KeySpan, to issue securities under its 1996 and 1999 Stock Option Plans from time to time during the Authorization Period. Options granted under Houston Exploration's 1996 Stock Option Plan may not exceed 10% of the shares of Houston Exploration's common stock outstanding from time to time.<sup>21</sup> Under the 1999 Stock Option Plan, 400,000 options were authorized of which 111,800 options were granted during 1999. Applicants further request authorization for KeySpan's indirect subsidiary, MyHomeKey.com, Inc. ("MHK"),<sup>22</sup> to issue and sell, and to repurchase, from time to time during the Authorization Period under certain existing stock plans, shares of MHK's common stock or options or other stock purchase rights.<sup>23</sup>

#### VII. Tax Allocation Agreement

Applicants request approval of an agreement for the allocation of consolidated tax among KeySpan and its subsidiaries following the Merger ("Tax Allocation Agreement"). KeySpan states that the Tax Allocation Agreement is subject to approval by the Commission under the Act because it provides for the retention by KeySpan of certain payments for tax losses that KeySpan has incurred in connection with acquisition-related debt related to the Mergers.

in order to satisfy the obligations of Eastern and EnergyNorth under all these discontinued plans. Therefore, KeySpan also requests authority to issue and/or to sell shares of its common stock for this purpose.

<sup>21</sup> As of December 31, 1999, substantially all options currently authorized under the 1996 Stock Option Plan had been granted.

<sup>22</sup> MHK was formed to establish and maintain an Internet-based website offering certain energy and home-related goods and services. As of April 18, 2000, KeySpan owned an approximate 18.2% beneficial interest in MHK through KeySpan's wholly owned subsidiary, KeySpan MHK Inc. MHK also expects to issue and sell common stock in an initial public offering for purposes of raising capital to finance the business activities contemplated by its current business plan.

<sup>23</sup> Under its existing stock plan, MHK may issue incentive stock options, nonstatutory stock options and stock purchase rights to participating employees, directors and consultants. Shares of MHK's common stock also have been reserved for issuance under an option granted to one of MHK's directors.

#### VIII. Affiliate Transactions

##### A. Subsidiary Service Companies

KeySpan request that the Commission approve two existing subsidiary service companies, KCS and KUS, and one additional service company, KeySpan Engineering & Survey Inc. ("KENG"), as subsidiary service companies in accordance with rule 88(b) under the Act (collectively, "Service Companies")<sup>24</sup> Applicants state that each of these three Service Companies would provide a distinct set of services to its affiliate companies.<sup>25</sup> KCS would provide traditional corporate and administrative services to KeySpan and the Subsidiaries. KUS would provide only limited services to five Subsidiaries.<sup>26</sup> KENG would provide engineering and surveying services primarily to the Utility Subsidiaries as well as to KeySpan's direct nonutility subsidiary KES, and to the Long Island Power Authority ("LIPA").<sup>27</sup>

Each of KCS, KUS, and KENG propose to enter into separate service agreements ("Service Agreements") with some or all of KeySpan and its Subsidiaries, each of which has been structured to comply with the accounting and cost allocation requirements of section 13 of the Act and the Commission's rules under the Act. Under each of the Service Agreements, charges for services provided to client companies would be at cost, in compliance with rules 90 and 91 under the Act.

KCS and KUS each propose to add to their respective existing employee rosters by transferring personnel for the current rosters of certain Intermediate Holding Companies, Utility

<sup>24</sup> In addition, KeySpan requests that the Commission find that this application is deemed to constitute a filing on Form U-13-1 for purposes of rule 88 under the Act, or, alternatively, that the filing of a Form U-13-1 is not necessary under the Act.

<sup>25</sup> KeySpan states that, because of certain requirements of the New York Public Service Commission ("NYUPSC") and the New York State Education Law, the services offered by KUS and KENG must be provided by separate entities in order to protect the public.

<sup>26</sup> As a result of certain restrictions imposed by the NYPSC, KUS will provide gas and electric transmission and distribution systems planning, marketing, gas supply planning and procurement, research and development, and meter repair operations, to only the following Subsidiaries: KeySpan New York; KeySpan Long Island; KeySpan Generation; KeySpan Electric Services LLC ("KES"); and KeySpan Energy Trading Services LLC. Each of Boston Gas, Colonial Gas, Essex Gas, and ENGI will provide these types of services to themselves respectively and will not receive them from KUS.

<sup>27</sup> LIPA is a corporate municipal instrumentality of the State of New York that purchases the electric generation capacity of KeySpan Generation at wholesale. KES provides certain operation, maintenance, and construction maintenance services to LIPA.

<sup>19</sup> Midland and Transgas are nonutility subsidiaries of Eastern.

<sup>20</sup> Following the Mergers, Eastern's and EnergyNorth's stock plans will cease to operate and may be assumed by KeySpan. However, KeySpan may issue shares of its common stock under the authorization sought in this application-declaration

Subsidiaries, and other Subsidiaries. KENG would be staffed by transferring certain existing personnel from KUS. The capitalization of each of KCS, KUS, and KENG would consist of no more than 10% equity.

In order to allow time to develop all required systems, Applicants seek authority to delay the full implementation of its proposed service company plan until January 1, 2001. During the period between completion of the Merger and that date, KeySpan states that it would use certain interim measures for allocating costs and assigning services within the combined registered holding company system.

#### B. Other Affiliate Transactions

Applicants request authority for the Nonutility subsidiaries to provide certain construction, goods or services at a fair market value, under certain circumstances, to any nonutility associate company in the KeySpan system. In addition, certain Nonutility Subsidiaries of KeySpan currently participate in certain transactions with affiliates at rates that may exceed cost under existing arrangements. KeySpan requests an interim exemption from the cost standards of rules 90 and 91 under the Act to allow these Nonutility Subsidiaries to continue participating in these arrangements for a period of not longer than 12 months following the date of the Commission's order in this matter. Specifically, KeySpan requests this interim approval for Northeast Gas Markets LLC, a wholly owned nonutility subsidiary of KeySpan, to continue to provide contract administrative services at market rates to two nonutility affiliate companies, Alberta Northeast Gas Limited and Boundary Gas Inc., for the specified 12-month period: KeySpan also requests an exemption from the cost standards of rules 90 and 91 under the Act to allow another Nonutility Subsidiary, Transgas, Inc., to continue providing gas transportation services to the Utility Subsidiaries to the extent that these services are not exempt under rule 81.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43310, File No. 4-429]

### Joint Industry Plan; Notice of Filing and Order Granting Temporary Effectiveness of Amendment to the Options Intermarket Linkage Plan

September 20, 2000.

Pursuant to Section 11A(a)(3) of the Securities and Exchange Act of 1934 ("Act")<sup>1</sup> and rule 11Aa3-2 thereunder,<sup>2</sup> notice is hereby given that on September 18, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Options Intermarket Linkage Plan ("Linkage Plan").<sup>3</sup> The amendment proposes to add the PCX as a participant to the Linkage Plan. The Commission is publishing this notice and order to solicit comments from interested persons on the proposed Linkage Plan amendment, and to grant temporary effectiveness to the proposed Linkage Plan amendment through January 18, 2001.

#### I. Description and Purpose of the Amendment

The current participants to the Linkage Plan are Amex, CBOE, and ISE. The proposed amendment to the Linkage Plan would add the PCX as a participant to the Linkage Plan. The PCX has submitted a signed copy of the Linkage Plan to the Commission in accordance with the procedures set forth in the Linkage Plan regarding new participants. Sections 4(c) and 5(c)(ii) of the Linkage Plan provide for the admission of new participants, in which eligible exchanges<sup>4</sup> may become a party to the plan by: (i) executing a copy of the plan, as then in effect; (ii) effecting an amendment to the plan reflecting the addition of the new participant's name and obtaining the Commission's approval of the plan as amended to

<sup>1</sup> 15 U.S.C. 78k-1(a)(3).

<sup>2</sup> 17 CFR 240.11Aa3-2.

<sup>3</sup> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the American Stock Exchange LLC ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), and the International Securities Exchange LLC ("ISE"). See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

<sup>4</sup> The Plan defines an "eligible exchange" as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that is a participant in the Options Clearing Corporation and a party to the Options Price Reporting Authority Plan.

reflect the new participant; and (iii) paying the applicable fee.

#### II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Linkage Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed Linkage Plan amendment that are filed with the Commission, and all written communications relating to the proposed Linkage Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of the PCX. All submissions should refer to File No. 4-429 and should be submitted by October 30, 2000.

#### III. Commission's Findings and Order Granting Accelerated Approval of Proposed Plan Amendment

After careful review, the Commission finds that the proposed Linkage Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.<sup>5</sup> Specifically, the Commission believes that the proposed amendment, which permits PCX to become a participant to the Linkage Plan, is consistent with Section 11A(a)(1)(D) of the Act,<sup>6</sup> in which Congress found that the linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders. The Commission believes the proposed amendment to include PCX as a participant in the Linkage Plan is also consistent with Rule 11Aa3-2<sup>7</sup> in that it will contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system

<sup>5</sup> In approving this proposed Linkage Plan amendment, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78k-1(a)(1)(D).

<sup>7</sup> 17 CFR 240.11Aa3-2.