March 21, 2006

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd floor
Boston, MA 02110

Re: **Boston Gas Company, Colonial Gas Company, and Essex Gas Company, each d/b/a KeySpan Energy Delivery New England, D.T.E. 06-9**

Dear Ms. Cottrell:

On January 30, 2006, the Boston Gas Company, Colonial Gas Company and the Essex Gas Company (the "KeySpan Utilities"), each d/b/a KeySpan Energy Delivery New England ("Company" or "KeySpan") filed a petition with the Department of Telecommunications and Energy ("Department") for approval, pursuant to G.L. c. 164, § 94A, of a natural gas asset optimization service contract (the "Proposed Agreement") among KeySpan Utilities, KeySpan Corporate Services, LLC ("KSCS") and Merrill Lynch Commodities, Inc. ("Merrill Lynch"). Pursuant to the procedural schedule established by the hearing officer, the Attorney General submits this letter as his Reply Brief.[1]

The Company has failed to provide any evidence that explains why it excluded two of the four bidders from bidding on its Request For Purchase (RFP) in the third bidding round. Prior to the third bidding round the Company made a material change to the nature of services sought resulting in a material change to its RFP. *See* D.T.E. 06-9, March 13, 2006, hearing transcript ("Tr."), at 26. The Company; however, purposely withheld information about the material change in the RFP from two bidders and eliminated those two bidders from its short list. *See* Tr. at 26-27 (discussing the Company's decision to change services sought).

---

[1] This brief is not intended to respond to every argument the Company has made or position it has taken. Rather, it is intended to respond only to the extent necessary to assist the Department in its deliberations, *i.e.*, to provide further information, to correct misstatements or misinterpretations, or to provide omitted context. Therefore, silence by the Attorney General in regard to any particular argument in another party's brief should not be interpreted as assent.

The Company alleges that:

> The Company did not apprise the two original bidders who were excluded from the short list of the change in structure [of the arrangement sought in the RFP] because the bids submitted by these entities were priced *well below* the short-list of bidders (in addition to other detracting features) and would have remained in that relative position even under a co-management arrangement.

(*emphasis supplied*) D.T.E. 06-9, Initial Brief of KeySpan Energy Delivery New England ("Company Brief"), at 7-8.

The record evidence contradicts this statement. One of the two original bidders excluded from the short list submitted a bid priced at a value almost equal to the value of a bid priced by a bidder that made it on the short list.[2] Therefore the Company incorrectly stated that two original bidders submitted bids "well below" the short list of bidders.

The Company also failed to provide evidence that the bidders that the Company excluded from the short-list "would have remained in that relative position even under a co-management arrangement." Company Brief, at 7-8. The Company did not inform the bidders excluded from the short list of the Company's desire to enter into a "co-management" arrangement and denying those bidders an opportunity to then adjust bids to reflect the new requirements. At most, the Company could only speculate about the relative position of the excluded bidders under a "co-management" arrangement. Tr. at 29-30.

The Company failed to provide evidence in support of its rationale for refusing to inform certain bidders of the material change in the RFP. The Department should reject the Proposed Agreement and order the Company to initiate an RFP process that gives all potential bidders a fair opportunity to bid on the "co-management" agreement.

---

[2] REDACTED

Respectfully submitted,

_____

THOMAS F. REILLY,
ATTORNEY GENERAL
By Authorized Representative
Jamie M. Tosches
Assistant Attorney General
Utilities Division
Public Protection Bureau
One Ashburton Place
Boston, MA 02108
(617) 727-2200

Dated: March 21, 2006

cc: Carol Pieper, Hearing Officer
Cheryl Kimball, Esq.
Erika Hafner, Esq.
Thomas O'Neill, Esq.
Joseph Ferro (redacted version)
Patricia French, Esq. (redacted version)