

**FOR FURTHER INFORMATION CONTACT:**

Robert Tuleya, Senior Counsel, Division of Investment Management, at (202) 942-0719.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: December 17, 2004.

**Jonathan G. Katz,**

*Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 35-27926]

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

December 17, 2004.

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 January 6, 2005, to the Secretary, Securities and Exchange Commission, Washington, DC 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 January 6, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### **KeySpan Corporation (70-10274)**

KeySpan Corporation ("KeySpan"), a combination gas and electric registered public utility holding company, One

Metro Tech Center, Brooklyn, NY 11201, has filed a declaration ("Declaration") with the Commission under sections 6(a) and 7 and rule 54 under the Act.

Applicants KeySpan states that it is a diversified registered public utility holding company. KeySpan directly or indirectly owns seven public utility companies in New York and Massachusetts.<sup>1</sup> KeySpan also directly or indirectly owns various nonutility subsidiaries (collectively referred to as the "Nonutility Subsidiaries") through which KeySpan engages in energy related nonutility activities.

By order dated December 18, 2003 (HCAR No. 27776) ("Financing Order"), the Commission authorized KeySpan and its subsidiaries to engage in a program of external and intrasystem transactions including, among other things, to engage in certain types of credit support arrangements through December 31, 2006 ("Authorization Period"). The Financing Order authorized KeySpan to enter into guarantees ("Guarantees"), performance Guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support with respect to the obligations of its subsidiaries as may be appropriate or necessary to enable the subsidiaries to carry on in the ordinary course of their respective businesses in an aggregate principal amount not to exceed \$4.0 billion outstanding at any one time (excluding obligations exempt under rule 45) ("Guarantee Financing Limit").

KeySpan now requests authorization to engage in certain transactions

<sup>1</sup> (i) The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York ("KEDNY"), which distributes natural gas at retail to residential, commercial and industrial customers in the New York City boroughs of Brooklyn, Staten Island and Queens; (ii) KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island ("KEDLI"), which distributes natural gas at retail to customers in New York State located in the counties of Nassau and Suffolk on Long Island and the Rockaway Peninsula in Queens County; (iii) KeySpan Generation LLC ("KeySpan Generation"), which owns and operates electric generation capacity located on Long Island all of which is sold at wholesale to the Long Island Power Authority ("LIPA") for resale by LIPA to its approximately 1.1 million customers; (iv) Boston Gas Company d/b/a KeySpan Energy Delivery New England ("Boston Gas"), which distributes natural gas to customers located in Boston and other cities and towns in eastern and central Massachusetts; (v) Essex Gas Company d/b/a KeySpan Energy Delivery New England ("Essex Gas"), which distributes natural gas to customers in eastern Massachusetts; (vi) Colonial Gas Company d/b/a KeySpan Energy Delivery New England ("Colonial Gas"), which distributes natural gas to customers located in northeastern Massachusetts and on Cape Cod; and (vii) EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England ("ENGI"), which distributes natural gas to customers located in southern and central New Hampshire, and the City of Berlin located in northern New Hampshire.

involving the divestiture of one or more Nonutility Subsidiaries, Delta KeySpan, LLC ("Delta KeySpan"), Granite State Plumbing & Heating, LLC ("Granite State") and Northern Peabody, LLC ("Northern Peabody" and, collectively "KSI Nonutilities"), which are owned indirectly by KeySpan Services, Inc. ("KSI").<sup>2</sup> KeySpan states that the divestiture transactions will involve the continued maintenance of certain existing Guarantees by KeySpan in favor of the KSI Nonutilities that were previously issued in accordance with the Financing Order ("KSI Divestiture Transaction"). KeySpan expects to sell these KSI Subsidiaries to individuals, groups or corporations. KeySpan requests authorization to engage in KSI Divestiture Transactions from time to time, the specific terms and conditions of which are not at this time known, without further prior approval by the Commission.

In connection with these proposed divestitures, KeySpan states that the terms of these previously issued and authorized Guarantees would not change in any respect. No new Guarantees and indemnities would be issued in connection with any proposed KSI Divestiture Transaction. KeySpan states that the Guarantees would remain in place only for an interim period until the completion of a project and the expiration of any associated warranty period in accordance with contractual obligations. KeySpan states that the original aggregate value of the issued Guarantees was approximately \$76 million. KeySpan states that the presently outstanding aggregate exposure of the Guarantees has been substantially reduced and as of November 30, 2004 is approximately \$23 million.

KeySpan states that each of the Guarantees have varying terms, and in certain cases the term has no date

<sup>2</sup> KeySpan states that Delta KeySpan is a Delaware limited liability company which designs, builds and installs HVAC systems primarily for commercial customers in Rhode Island and the New England region. KeySpan states that Granite State (formerly Granite State Plumbing and Heating, Inc.) is a Delaware limited liability company that is a mechanical contractor engaged in the design, installation and service of commercial and industrial plumbing, HVAC equipment and process piping systems for customers in the industrial and governmental sector, as well as real estate developers in new England. KeySpan states that Northern Peabody (formerly Northern Peabody, Inc.) is a Delaware limited liability company that is a mechanical contractor engaged in the design, installation and service of plumbing, heating, ventilation, air conditioning and process piping systems. It serves commercial, industrial and institutional customers, in the hospital, healthcare and governmental markets in New Hampshire, southern Maine and Massachusetts (excluding Boston).

certain but is set to expire upon completion of the associated work project. In any event, KeySpan states that with respect to each of the KSI Nonutilities, none of the Guarantees, including any associated warranty period, are expected to terminate later than the dates set forth below:

Delta KeySpan, LLC: February 28, 2007  
Granite State Plumbing & Heating, LLC: September 30, 2006  
Northern Peabody, LLC: February 28, 2006

KeySpan also requests that the Commission reserve jurisdiction over the maintenance, for an interim period of time, of certain existing Guarantees and other credit support mechanisms, previously issued under the Financing Order and directly related to the proposed divestiture of the following additional KSI subsidiaries: WDF Inc. ("WDF"), and its subsidiaries, Binsky & Snyder, LLC ("Binsky") and its subsidiaries and Binsky and Snyder Service, LLC ("Binsky Service").<sup>3</sup>

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50866; File No. SR-Amex-2003-90]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange LLC Relating to the Amendment of Exchange Rule 153 and Amendment No. 1 Thereto

December 16, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 9, 2003, the American Stock Exchange

<sup>3</sup> KeySpan states that WDF, and its subsidiaries provide mechanical contracting services, which are primarily the design, construction, alteration, maintenance and repair of plumbing and HVAC, systems including related piping installation and welding, to large scale commercial, institutional and industrial customers in the New York area. KeySpan states that Binsky and its subsidiaries are specialty mechanical contractors which install heating, ventilating and air conditioning systems, which use electricity or gas, for commercial and industrial customers located primarily in New Jersey. KeySpan states that engaged in installing HVAC systems for commercial and industrial customers located primarily in New Jersey.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II below, which Items have been prepared by the Exchange. On December 15, 2004, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its Rule 153 relating to the creation of an electronic audit trail. The text of the proposal rule change is set forth below. New text is in *italics*; deletions are in brackets.

\* \* \* \* \*

#### Record of Orders

Rule 153. (a) Every member or member organization shall maintain a record of every order and every modification and cancellation of such order transmitted to the Floor of the Exchange, which record shall include the name, amount and price of the security and the time when such order, modification or cancellation was so transmitted.

(b) Every member or member organization shall maintain a record of every order and every modification and cancellation of such order received by such member or member organization on the Floor of the Exchange. Such record shall include the name, amount and price of the security and the time when such order, modification or cancellation was received. With respect to orders that are eligible for input into the Exchange's electronic order processing facilities, members and member organizations shall comply with their record keeping obligations under this Rule by inputting immediately upon receipt eligible orders, modifications and cancellations that are not already systematized into the Exchange's electronic order processing facilities and retaining the

<sup>3</sup> In Amendment No. 1, the Exchange: (1) Applied the proposed rule change to index options that are exclusively traded on Amex. (2) changed a deadline in the proposed rule. (3) provided that orders for FLEX options and accommodation trades do not need to be systematized prior to representation. (4) provided for the use of the Exchange's "Order Ticket" enhancement to BARS as a second acceptable means for systematizing order. (5) clarified that the systemization prior to representation requirement applies to modifications and cancellations of orders, and (6) made minor corrections to the text of the rule and filing.

record of such orders provided to them by the Exchange for this purpose.

(c) Rescinded.

(d) Every member or member organization shall preserve for at least three years a record of every commitment or obligation to trade issued from the Floor and cancellation thereof, which record shall include the name, amount, and price of the security, the destination market center, and the time when such commitment was issued or cancelled.

(e) Every member or member organization shall maintain for at least three years a record of every order and every modification and cancellation of such order entered into the After-Hours Trading Facility (as Rule 1300 (After-Hours Trading: Applicability and Definitions) defines that term), which record shall include the name and amount of the security, the terms of the order, the time when it was so entered, and the time at which a report of execution was received. Every specialist shall maintain for at least three years reports of all executions and modification and cancellations of orders placed with the specialist through the After-Hours Trading Facility.

(f) Every member or member organization shall maintain a record for at least three years of every report of the execution of an order, commitment or obligation covered by paragraph (a), (b), (d) or (e) of this rule in addition to the record required by such paragraphs, which shall include the time of the receipt of such report.

(g) Before any order, commitment or obligation covered by paragraph (a), (b), (d) or (e) of this rule is executed, there shall be placed upon the order slip or other record the name or designation of the account for which such order, commitment or obligation is to be executed; no change in such account name or designation shall be made unless the change has been authorized by any member or officer in the member organization or authorized representative thereof who shall, prior to giving his approval of such change, be personally informed of the essential facts relative thereto and shall indicate his approval of such change in writing on the order.

(h) All records required to be maintained under this rule shall include such information and shall be preserved for such period as required by the Securities Exchange Act of 1934 and the rules thereunder relating to the requirements for the retention of orders.

(i) The term "order" as used in this Rule 153 includes any modification to or cancellation of such order.

\* \* \* *Commentary*