

Islander
East Pipeline
Company



Islander East Pipeline Project

Filed: June 15, 2001

Docket Number: CP01-



June 15, 2001

Mr. David P. Boergers, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: *Islander East Pipeline Company, L.L.C.*, and Abbreviated Application for a
Certificate of Public Convenience and Necessity, Docket No. CP 01 - _____

Dear Mr. Boergers:

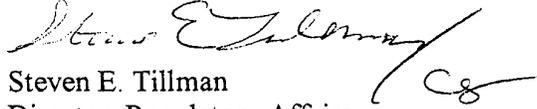
Islander East Pipeline Company, L.L.C ("Islander East") hereby submits for filing an original and seven (7) paper copies of an Abbreviated Application for a Certificate of Public Convenience and Necessity, along with a diskette containing the electronic version of the filing. In this Application, Islander East seeks authority to construct, own, operate and maintain certain facilities and to lease capacity as more fully described herein. Islander East is filing this Application concurrently with a related application filed by Algonquin Gas Transmission Company. ("Algonquin") for authorization to constructed, own, operate, maintain, and lease certain rights to capacity on the Algonquin system.

In order to expedite construction of its project, Islander East respectfully requests that the Commission issue a Preliminary Determination with respect to the non-environmental aspects of its project by December 31, 2001, with a final certificate to issue by July 15, 2002.

Exhibit F-I, which is comprised of Environmental Resource Reports 1 through 13, has been included in the concurrently filed Islander East application and is incorporated herein by reference. Islander East requests that the information in the Environmental Resource Report No. 4 labeled "Contains Privileged Information-Do Not Release" be treated as confidential pursuant to Section 388.112 of the Commission's regulations. Islander East provides such information only for the Commission Staff's use. Accordingly, the privileged information is being filed under separate cover and is not included with the copies herewith submitted to the Commission.

If you have any questions regarding this filing, please call me at (713) 627-5113.

Very truly yours,



Steven E. Tillman
Director, Regulatory Affairs

Attachments

cc: R. E. Mathura
J. M. Robinson (letter)
R. R. Hoffmann (letter)
K. D. Frye
R. H. Schroeder (letter)
W. L. Zoller (letter)

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

In the Matter of

Islander East Pipeline Company, L.L.C.

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Docket No. CP01-

**APPLICATION FOR CERTIFICATES OF
PUBLIC CONVENIENCE AND NECESSITY
AND RELATED AUTHORIZATIONS**

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**APPLICATION FOR CERTIFICATES OF
PUBLIC CONVENIENCE AND NECESSITY
AND RELATED AUTHORIZATIONS**

Islander East Pipeline Company, L.L.C. ("Islander East") files this application, pursuant to and in accordance with Section 7(c) of the Natural Gas Act, as amended ("NGA"),¹ and Part 157 of the Federal Energy Regulatory Commission's ("FERC" or "the Commission") Regulations promulgated thereunder, for authorizations necessary: (i) to construct, install, own, operate and maintain a new natural gas pipeline and ancillary facilities to be located in Connecticut and New York ("Islander East Pipeline Project"), (ii) to the lease by Islander East of pipeline capacity on facilities owned by Algonquin Gas Transmission Company ("Algonquin") and (iii) to charge initial recourse rates for certain open access services to be rendered by Islander East, all as more fully set forth herein.

Islander East further requests that the Commission grant to it a blanket certificate of public convenience and necessity pursuant to Part 157(F) of the Commission's Regulations authorizing certain construction and operation of facilities, and a blanket

¹ 15 U.S.C. Section 717f(c) (1998).

certificate of public convenience and necessity pursuant to Part 284(G) of the Commission's Regulations authorizing the transportation of natural gas for others.

Islander East respectfully requests that the Commission issue a preliminary determination ("PD") on the non-environmental aspects of the Islander East Pipeline Project on or before December 31, 2001, and a final order granting the authorizations requested herein by July 15, 2002. Issuance of a PD by December 31, 2001, will provide both Islander East and Algonquin, which is filing contemporaneously herewith an application for authorization to construct facilities and lease capacity to Islander East ("Algonquin Application"), the necessary assurances to proceed with financial commitments for long lead-time equipment. Issuance of a final order by July 15, 2002 will allow Islander East to complete construction of the proposed facilities in a manner consistent with the in-service date of November 1, 2003 desired by the new markets to be served and which permits construction of the Long Island crossing during the winter to minimize environmental impacts. It will also facilitate the construction schedule established in cooperation with local, state and federal environmental agencies and marine recreation, commercial navigation and fishery groups in order to minimize environmental impacts.

I.

INFORMATION REGARDING APPLICANT

The exact legal name of Islander East is Islander East Pipeline Company, L.L.C. Islander East's principal place of business is 5400 Westheimer Court, Houston, Texas 77056. Islander East is a limited liability company formed under the laws of the State of Delaware. The members of Islander East are Duke Energy Islander East Pipeline

Company, L.L.C. (“Duke Energy”), a Delaware limited liability company and a wholly owned subsidiary of Duke Energy Gas Transmission Corporation, and KeySpan Islander East Company, L.L.C. (“KeySpan”), a Delaware limited liability company and a wholly owned subsidiary of KeySpan Energy Development Corporation. Duke Energy and KeySpan have equal membership interests in Islander East.

The Limited Liability Company Agreement, which sets forth the principles for the business structure of Islander East, is included herewith in Exhibit A. Pursuant to the Construction, Operation and Maintenance Agreement (“CO&M Agreement”) attached as Exhibit M hereto, Duke Energy is the Operator of Islander East.

Islander East does not currently provide natural gas transportation service. Upon commencement of operations proposed in this application, Islander East will become a “natural gas company” within the meaning of Section 2(6) of the NGA and, as such, will be subject to the jurisdiction of the Commission. Islander East will provide transportation service in interstate commerce under the terms of its FERC Gas Tariff, a *pro forma* copy of which is included in Exhibit P hereto.

The names, titles, post office addresses and telephone numbers of the persons, on behalf of Islander East, to whom correspondence and communications in regard to this request are to be addressed, are:

Frederick M. Lowther
²Beth L. Webb
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2101 L Street NW
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(202) 775-4782

Thomas C. O'Connor
Senior Vice President
²S. E. Tillman
Director, Regulatory Affairs
Duke Energy Islander East Pipeline Company
P.O. Box 1642
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(713) 627-5113

Islander East also requests service on:

Duke Energy Islander East Pipeline Company
Suite 1200
1620 L Street NW
Washington, DC 20036

II.

EXECUTIVE SUMMARY

Islander East will commence at a point near Cheshire, Connecticut, where Islander East will interconnect with the existing Algonquin mainline pipeline system, pass through southern Connecticut, traverse the Long Island Sound, and terminate in Brookhaven, New York on Long Island. Islander East will initially make available up to 285,000 dekatherms per day (“Dth/d”) of new, cost-effective natural gas transmission capacity to markets in Long Island, New York City and Connecticut. Additionally,

² Designated to receive service in accordance with Rule 2010 of the Commission’s Rules of Practice and Procedure.

Islander East proposes to lease 285,000 Dth/d of capacity from Algonquin. As set forth in the Algonquin Application, Algonquin proposes to upgrade its existing C-1 and C-1 L systems and to construct a new compressor station in Cheshire, Connecticut. Islander East's lease of the resulting capacity from Algonquin will allow customers of Islander East to access supplies throughout the Northeast pipeline grid. It will avoid the need for Islander East to install additional new pipeline facilities, thereby minimizing impacts to the environment.

The Islander East Pipeline Project will provide the Connecticut, Long Island and New York City markets with access to natural gas transportation service to meet a variety of anticipated loads: local distribution company ("LDC") growth; new, efficient, clean, gas-fired electric generating plants; and existing facilities converting to natural gas. Regional electric transmission constraints in these areas require new, locally sited power plants to meet near term growth requirements. There are several new gas-fired power plants proposed for construction in the Long Island, New York City and New England areas. The proposed Islander East Pipeline Project is ideally suited to serve these plants because it is designed to deliver gas at the high pressure required by them.

The market supports the Islander East Pipeline Project. Currently, Islander East has executed precedent agreements to provide transportation service to KeySpan Gas East Corporation, d/b/a KeySpan Energy Delivery Long Island ("KEDLI") and The Brooklyn Union Gas Company, d/b/a KeySpan Energy Delivery New York ("KEDNY"). KEDLI and KEDNY are affiliates of KeySpan Corporation. KeySpan Corporation is one of the largest natural gas utilities in the Northeast, and the fourth largest in the country. It owns and operates more than 6,000 megawatts of electric power generation on Long

Island and in New York City; manages the electric transmission and distribution system for the Long Island Power Authority's 1.1 million electric customers; and provides energy-related services to homes, businesses and other end users. KeySpan Corporation operates and distributes natural gas to nearly 2.5 million gas customers in New York, Massachusetts and New Hampshire. Its affiliates KEDNY (formerly Brooklyn Union) and KEDLI (formerly Brooklyn Union of Long Island) are regulated LDCs that sell and deliver natural gas to home and business customers in New York City and Long Island, respectively.

Islander East has also executed Precedent Agreements with two power producers, AES Endeavor, a division of AES Corporation and Brookhaven Energy Limited Partnership, an affiliate of American National Power. These power producers are hereinafter referred to as "AES" and "ANP." AES Corporation is a leading global power company comprised of competitive generation, distribution and retail supply businesses, including 160 power plants, throughout the world. AES is currently developing a new gas-fired power plant located in Calverton, New York ("AES Calverton Plant"). American National Power is a subsidiary of International Power plc, one of the world's leading independent electric generating companies with over 8,550 MW (net) in operation, 3,000 MW (net) under construction and approximately 8,000 MW (net) in advanced development throughout the world. ANP is currently developing a new gas-fired power generation facility in Brookhaven, New York ("ANP Brookhaven Plant").

KEDNY, KEDLI, AES and ANP are herein collectively referred to as the "Islander East Customers".

The Islander East Pipeline Project will provide several significant economic and operational benefits to the Islander East Customers and the growing Connecticut, Long Island, and New York City markets:

- Low cost incremental expansion to increase pipeline system infrastructure;
- High pressure deliverability to meet gas-fired electric generation load and incremental LDC load growth;
- Greater diversity of supply for existing and unserved markets where growth rates have far exceeded the national average for the past several years;
- Fully-integrated market access between New York and New England;
- Additional transportation alternatives for LDCs and end users, resulting in greater competition and increased supplier access; and
- Enhanced operational flexibility and reliability for customers of Islander East, as well as existing Algonquin customers.

In short, introduction of these new pipeline facilities will increase supply alternatives and competition and thereby enhance supply diversity, flexibility and security in the Connecticut, Long Island and New York City market areas.

III.

THE CERTIFICATE POLICY STATEMENT

The Policy Statement³ sets forth the Commission's criteria for determining whether there is a need for a proposed project and whether the proposed project will

³ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order clarifying Statement of Policy*, 90 FERC ¶ 61,128, *order further clarifying Statement of Policy*, 92 FERC ¶ 61,094 (2000).

serve the public interest. The Policy Statement explains that, in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits of the project against the project's potential adverse consequences.⁴ The objectives of the policy are to foster competitive markets, protect captive customers and avoid unnecessary environmental and community impact, while serving increased demands for natural gas, providing appropriate incentives for the optimal level of construction and promoting efficient customer choice.⁵

Under the Policy Statement, the threshold question for existing pipelines that propose new construction is whether the project can proceed without subsidization from existing customers.⁶ The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects of the project.⁷ If efforts have been made to minimize any such effects, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against those effects.⁸

Consistent with the criteria of the Policy Statement, and as detailed further herein, the construction and operation of the proposed facilities are in the public interest and are required by the public convenience and necessity. The Islander East Pipeline Project

⁴ *Tennessee Gas Pipeline Co.*, 92 F.E.R.C. ¶ 61,142, at 61,519 (2000).

⁵ Policy Statement at 61,743.

⁶ *Id.* at 61,745.

⁷ *Id.*

⁸ *Id.*

satisfies the "no subsidy" requirement. Islander East has taken diligent steps to mitigate any adverse impacts. Finally, the public benefits of the Islander East Pipeline Project far outweigh any such adverse impacts.

Threshold Requirement

- Islander East is a new interstate pipeline that does not currently provide transportation service. Therefore the Policy Statement's threshold requirement that there be no subsidization by existing customers is not applicable.

Avoidance or Minimization of Adverse Effects

◆ Impact on Existing Customers

- As Islander East is not an operating pipeline providing transportation service, there will be no impact on existing customers.

◆ Impact on Existing Pipelines and their Captive Customers

- The Islander East Pipeline Project will have no adverse impacts on existing pipelines or their captive customers because it will serve incremental load.
- The Islander East Pipeline Project will also enhance service that the Islander East Customers provide to their customers. As explained in the Islander East Market Study ("Market Study"), attached as Exhibit I-1, "by interconnecting with KeySpan's distribution network on the eastern end of Long Island, Islander East can serve the growing demand of Long Island, directly feed proposed power generation loads in the target markets and, through displacement opportunities, access New York City markets, eliminating costly distribution facility upgrades, and providing cost-effective supply diversity, flexibility and security of supply." (Market Study p. 5).

◆ **Landowners and Communities**

- The Islander East Pipeline Project involves approximately 50 miles of pipeline – about 28 miles on land and 22 miles within the Long Island Sound. Approximately 87% of the proposed land route will utilize and/or parallel existing corridors. Islander East has proposed to enter the Long Island Sound in an area that minimizes impacts to shellfishing. It will utilize a horizontal directional drill to minimize potential impacts to town-leased oyster beds in Connecticut waters.
- Islander East has met with the elected officials of the potentially affected townships and other public officials. It has conducted four informational open houses to explain its project to potentially affected communities and landowners. As a direct result of its discussions with public officials, communities, landowners and shellfish fishermen, Islander East has made modifications to its project design to address the concerns of these groups. For example, based on consultations with the Connecticut Division of Agriculture, the oyster fishermen and the Long Island Sound Lobstermen's Association, Islander East intends to construct the Long Island Sound portion of the pipeline during the winter of 2002–2003 to minimize impacts to Long Island Sound resources. The Resource Reports included in Exhibit F hereto reflect additional changes made as a result of these consultations.
- Islander East has set up a toll free number (1-800-516-9997) to enable landowners and other interested parties to address their questions or concerns to Islander East.
- Further details regarding Islander East's efforts to ensure that communities and landowners are aware and informed about the project are set forth in Exhibit Z-1.

The brochure and a list of Frequently Asked Questions which Islander East distributed at the four informational meetings are included in Exhibit Z-2.

- Islander East has been designed to meet the increasing needs of KEDNY and KEDLI for additional natural gas capacity to serve load growth in the KEDNY and KEDLI markets on a phased-in basis, as further described in Section V. Islander East can be expanded to meet future growth by the addition of compression and minimal pipeline looping. Thus, Islander East has been designed to meet both current and future capacity requirements in a manner which minimizes both immediate and future environmental impacts.

Public Benefits

◆ Market Need

- Islander East was developed to meet the market needs described hereinafter and further documented in the Market Study included in Exhibit I. Islander East proposes a moderately sized project that can be expanded with minimal impacts to meet future demand, as additional LDC and electric generation markets mature.
- From January 29, 2001 through February 28, 2001, Islander East held an open season seeking indications of interest in transportation on the proposed facilities. The open season announcement, included in Exhibit Z-1 hereto, informed potential customers about the proposed project, its sponsors, the services to be offered and the terms and conditions for transportation on Islander East. As detailed hereafter in Section V, Islander East Customers submitted nominations and later executed Precedent Agreements, included in Exhibit I, for almost all of the initial capacity of the Islander East Pipeline Project.

- The New York Independent System Operator (“NYISO”) recently issued a report entitled “Power Alert: New York’s Energy Crossroads, March 2001” that concludes that New York State needs to add 8,600 MW of new installed generating capacity by 2005 (including 1,800 MW on Long Island and 2,800 MW in New York City). NYISO reliability rules require that nearly all generation needed to meet Long Island and New York City load requirements be located on Long Island. Thus, the Islander East Pipeline Project with its high pressure deliverability will be ideally located and designed to facilitate the development of the needed generation projects.
- The Islander East Pipeline Project will also serve market needs in Connecticut. Islander East increases access to Sable Island supplies via the Maritimes/HubLine expansion. Islander East’s high-pressure pipeline facilities will be available to deliver such supplies to meet the requirements of LDC load growth and future gas-fired electric generating facilities in Connecticut. Proposed additions of gas-fired electric generating capacity in the Connecticut market area now total more than 2,250 MW. In addition, on May 31, 2001, the Connecticut Senate approved legislation requiring six existing power plants to meet modern emissions standards by the end of 2004. If, as anticipated, Governor Rowland signs this legislation into law, there is a high probability that some or all of the six plants

will switch to natural gas as an alternative source of fuel, thus further increasing natural gas demand in Connecticut.⁹

◆ **Additional Benefits**

The following additional benefits are further detailed in the attached Market Study as indicated below:

- Low cost incremental expansion to increase pipeline system infrastructure – “Demand for natural gas in New York City and Long Island is growing at a quicker rate than other areas of the country and Islander East will deliver incremental gas to these load pockets. The increased supply diversity, infrastructure enhancements, and access to higher-pressure gas will bring increased reliability to the end-use customers and the power generators in Connecticut as well . . . A further advantage of Islander East is associated with the cost of expanding the gas infrastructure into New England now and in the future. . . . Islander East puts gas directly where it is needed. Increased deliveries from the south would require an upgrading of some parts of the KeySpan Energy Delivery Long Island facilities. Direct deliveries to the east end of the island will help to minimize the upgrades needed to the KeySpan facilities on Long Island. Another pipeline delivery system into Long Island that is capable of accessing gas production from existing and new supply basins adds flexibility to both the New York City and Long Island markets.” (Market Study pp. 56, 57)

⁹ *The Connecticut Post*, *Senate Approves Tough Standards for State's Oldest Power Plants*. Dated May 31, 2001. See copy of article from www.connpost.com at Exhibit I-2.

- High pressure deliverability to meet gas-fired electric generation load and incremental LDC growth – “In its March 2001 study, the NYISO presents several perspectives regarding the amount of additional generating capacity required in New York City and Long Island markets. First, based on the NYISO’s view that New York needs to add 8,600 MW of capacity by 2005 for reliability, economic and environmental reasons, under this case the NYISO has identified a need for 2,800 MW of capacity for New York City and 1,800 MW for Long Island by 2005.” (Market Study p. 34)
- Greater diversity of supply for existing and unserved markets where growth rates have far exceeded the national average for the past several years – “load growth on Long Island is expected to continue at approximately 6% per year through 2003, due primarily to homeowner conversions to natural gas . . . On a regional market level, an analysis of KeySpan’s throughput data over the 94/95 gas year to the 99/00 gas year (November to October) illustrates significant growth in both the Long Island and New York City markets. The throughput for both [the KEDLI and KEDNY] systems in total increased at an average annual rate of 4.7% over this recent historical timeframe. Growth in the KeySpan Long Island service area has averaged 8% per year over the same time period, while growth in the KeySpan New York service area has averaged 3.13%.” (Market Study pp. 6, 14)
- Fully integrated market access between New York and New England - “Long Island and New York City have historically been relatively isolated markets from both a gas and an electric perspective. On the gas side, pipeline capacity limitations into New York City from the west and limitations in the New York

Facilities System have been cited as limits to growth in gas requirements.”
(Market Study p. 5)

- Additional transportation alternatives for LDCs and end users, resulting in greater competition and increased supplier access – “[Islander East] provides another pipeline option for Long Island, adding a third separate underwater line in addition to the Transco and Iroquois facilities. This allows for deliveries into Long Island from the east and now from the north, thus enhancing gas supply reliability. Islander East also provides access to numerous supply basins throughout the North American pipeline system, including domestic supplies, western Canadian supplies and most importantly, east coast Canadian supplies, through Algonquin’s proposed interconnection with Maritimes & Northeast Pipeline (via HubLine) for all target markets.” (Market Study p. 3)
- Enhanced operational flexibility and reliability for customers of Islander East, as well as existing Algonquin customers – “The added flexibility of the pipeline system onto Long Island provides operational benefits for the entire southeast New York market, by avoiding the existing bottlenecks of the local distribution network of the New York Facilities Group, which currently receives roughly 60% of its gas supply on the western edge of their service territory . . . Access to gas supplies allows for increased fuel competition and opportunities to displace higher emission fuels in existing facilities.” (Market Study p.6)

◆ **Advancing Clean Air Objectives**

The Market Study concludes that New England area residents will receive significant air quality benefits due to the greater use of natural gas in electric power generation

that new pipeline infrastructure projects, like the Islander East Pipeline Project, will promote:

- Fueling new more efficient gas-burning combined cycle and combustion turbine technologies that will be introduced into the fleet of power plants in the area, thus enabling power production with less overall combustion of fossil fuel;
- Enabling newly permitted power generators with extremely low emission rates to produce power in competition with existing power plants, thus displacing output at existing generators that emit air pollution at much higher emission rates per unit of electric output; and
- Reliance on a fuel with inherently lower emissions of certain key pollutants, such as NO_x, SO₂, mercury, particulates, air toxins, and greenhouse gases such as CO₂.

Public Convenience and Necessity

The present and future public convenience and necessity require approval of the instant application for certificates and related authorizations. From both Natural Gas Act and National Environmental Policy Act perspectives, Islander East constitutes a sound proposal to increase access into Long Island's gas distribution grid and to improve deliverability within that grid.

The Islander East Pipeline Project satisfies the criteria of the Commission's Policy Statement. On the threshold question, there is no issue of subsidization by existing customers. Islander East has shown that it will benefit existing customers on the KEDLI and KEDNY systems, enhancing reliability of service and providing increased access to supplies and transportation with minimal environmental impacts. Moreover, Islander East

will avoid the environmental impacts of constructing duplicative facilities by leasing expanded capacity on the pipeline facilities of Algonquin. Islander East has shown a specific need for gas in the Connecticut, Long Island and New York City markets. New York is one of the fastest growing areas for LDCs and electric power generation facilities. Islander East will be able to serve that growing demand for firm gas transportation and to meet the needs of these markets as they continue to develop. Islander East will be providing service at competitive negotiated or cost-based recourse rates. Finally, Islander East's FERC Gas Tariff will be based on Order Nos. 636 *et seq.* and 637, furthering the Commission's goals of utilizing unbundled transportation service, straight fixed-variable rate design, and capacity release.

IV.

DESCRIPTION OF PROPOSED FACILITIES

Islander East proposes to construct the following facilities:

Islander East Pipeline

Islander East will construct approximately 44.8 miles of new 24-inch-diameter pipeline from a point near Cheshire, Connecticut, where it will interconnect with the existing Algonquin mainline pipeline system, (milepost ("MP") 13.7), across the Long Island Sound to the town of Brookhaven, New York. The Islander East mainline will be designed with a maximum allowable operating pressure of 900 pounds per square inch ("psig").

KeySpan Energy Delivery Long Island & ANP Brookhaven Meter Station

Islander East will construct a new meter station and 24-inch diameter receiver at the terminus of the Islander East mainline (MP 44.8) in Brookhaven, New York. The facility

will contain two separate meters and will serve as a delivery point from Islander East to the existing KEDLI distribution pipeline and to the ANP Brookhaven Plant. The non-jurisdictional KEDLI distribution pipeline and the ANP Brookhaven Plant are described in Section 1.8 of Resource Report No. 1, included in Exhibit F-I. KEDLI and ANP will be responsible for the installation of their respective portions of the interconnecting facilities between the meter station and KEDLI's existing pipeline and the ANP Brookhaven Plant.

Calverton Lateral & AES Calverton Meter Station

Islander East will construct approximately 5.6 miles of new 24-inch-diameter pipeline from the Islander East mainline near Wading River, New York (MP 34.3) to the AES Calverton Plant. See Section 1.8 of Resource Report I in Exhibit F-I for a description of this non-jurisdictional power plant. This new Calverton Lateral will be designed with a maximum allowable operating pressure of 900 psig.

Islander East will construct a new meter station and a 24-inch diameter receiver at the terminus of the Calverton Lateral (MP CA-5.6). The meter station will serve as a delivery point from the Calverton Lateral to the AES Calverton Plant. AES will be responsible for the installation of the interconnecting facilities between the meter station and the AES Calverton Plant.

Islander East/North Haven Meter Station

Islander East will construct a new interconnecting meter station and 24-inch diameter launcher at the head of the Islander East mainline in North Haven, Connecticut (MP 0.0). The meter station will serve as a custody transfer point for gas between

Algonquin's C-1 and C-1 L systems and the Islander East pipeline. The meter station will be located within or adjacent to Algonquin's existing North Haven Meter Station.

Aboveground Valves

Islander East will construct five new aboveground valves along the pipeline at MP 6.0, 9.9, 33.2, 34.2, and 42.0. These locations were determined based on population density and market need and in accordance with the regulations of the United States Department of Transportation ("U.S. DOT"). The mainline valve site at MP 33.2 will contain a side tap valve for a possible future connection to potential customers. The mainline valve site at MP 34.2 will contain a 24-inch side tap valve and a 24-inch diameter launcher for the Calverton Lateral.

The Islander East facilities will be designed to have an initial capacity of 285,000 Dth/d. They are further detailed in Exhibits F, G, G-I, and G-II and in the Resource Reports in Exhibit F-I. Table 1.1.2-1 provides a summary of the proposed pipeline facilities and Table 1.1.2-2 provides a summary of the proposed aboveground facilities. The estimated cost is approximately \$149.6 million as detailed in Exhibit K. The new facilities will be constructed and operated by Duke Energy pursuant to the terms and conditions of the CO&M Agreement, included in Exhibit M.

Islander East's scheduled in-service date is November 1, 2003. Pre-construction activities are scheduled to commence in summer 2002 to meet this in-service date.

As shown in Exhibit F-I, the construction and operation of the facilities is not expected to have any significant adverse impacts on the quality of human health or the environment. The project was designed to minimize environmental impacts and, as demonstrated in Exhibit F-I and Section III above, Islander East has taken substantial

steps to mitigate any remaining environmental or other impacts. Islander East submits that the proposed facilities will be designed, constructed, installed, inspected, tested, operated and maintained in accordance with all applicable safety standards and plans for maintenance and inspection as prescribed by the U.S. DOT.

V.

MARKET

Growth rates for natural gas demand in the Long Island and New York City markets have exceeded the national average for the past several years. Much of this demand is the result of the growth in residential load on eastern Long Island. Islander East is designed to serve this growth in traditional New York and Connecticut LDC markets. In addition, Islander East is designed to deliver gas to new power generation facilities expected to be constructed in New York and Connecticut to meet the rapidly growing electric requirements.¹⁰

Islander East held an open season from January 29 to February 28, 2001 and has since executed Precedent Agreements, included in Exhibit I, with the four Islander East Customers. Islander East has executed Precedent Agreements with two local distribution companies, KEDNY and KEDLI (together the “KeySpan Companies”), which allow them to phase-in their volumes over the first five years of their contracts. KEDNY and KEDLI have made firm service commitments for 49,500 Dth/d and 60,500 Dth/d respectively, commencing November 1, 2003. The KeySpan Companies will increase their capacity commitments each year to a specified level of capacity within a

¹⁰ Market Study p. 5.

predetermined range (see Exhibit A to the Precedent Agreements). The following Table 1 sets forth the capacity profile for the KeySpan Companies and the other Islander East Customers discussed immediately below:

Table 1

Customer:	Maximum Daily Quantity at year beginning:					
	11/1/03	11/1/04	11/1/05	11/1/06	11/1/07	11/1/08
ANP Brookhaven	90,000	90,000	90,000	90,000	90,000	90,000
AES Endeavor	60,000	60,000	60,000	60,000	60,000	60,000
KEDLI maximum (after yearly election)	60,500	82,500	112,750	134,750	162,250	162,250
KEDLI minimum (after yearly election)	60,500	71,500	92,000	114,000	138,000	162,250
KEDNY maximum (after yearly election)	49,500	67,500	92,250	110,250	132,750	132,750
KEDNY minimum (after yearly election)	49,500	58,500	75,500	93,000	112,000	132,750
Total Maximum MDQ	260,000	300,000	355,000	395,000	445,000	445,000
Total Minimum MDQ	260,000	280,000	317,500	357,000	400,000	445,000

Islander East has also executed Precedent Agreements with the developers of two proposed power plants, ANP and AES. They plan to utilize the capacity to fuel their plants which will meet the growing electric power demand in the Long Island and New York City markets. Both the ANP Brookhaven Plant and the AES Calverton Plant are currently in the development phase and the precise level of firm capacity required on Islander East to meet the needs of these plants has not yet been finally determined. Accordingly, the executed Precedent Agreements with ANP and AES, included in Exhibit I, include rights for them to modify their total firm capacity commitments on Islander East.¹¹

¹¹ Specifically, each of ANP and AES have a one-time option, which must be exercised by June 1, 2002, to reduce their capacity commitments by up to 40,000 and 20,000 Dth/d, respectively.

As shown above, up to 260,000 Dth/d of Islander East's proposed initial capacity of 285,000 Dth/d is currently committed under the Precedent Agreements.¹² While Islander East recognizes that the proposed facilities will need to be expanded to meet the future service requirements of its customers, the timing and scope of such expansion are not certain at this time. Islander East submits that the proposed facilities reflect an appropriate balance in the design for a system which will be both capable of delivering initial contract volumes of 260,000 Dth/d, and be expandable via compression and minor pipeline looping to serve future requirements. Moreover, Islander East has attempted to optimize its initial design so as to recognize the needs of its customers without overbuilding facilities in view of potential changes in capacity commitments during the first five years of service. Thus, the proposed initial capacity of 285,000 Dth/d will permit increased deliverability while minimizing future additional environmental, landowner and marine impacts as a result of any expansion(s). Islander East will file, as necessary, additional applications to install compression and/or minor pipeline looping when final capacity commitments are made and the ultimate needs of its customers are known.

VI.

GAS SUPPLY

Islander East Customers will be responsible for acquiring the gas supplies to be transported via the proposed Islander East facilities. In today's environment, customers

¹² The remaining 25,000 Dth/d of the initial day-one capacity will be available for interruptible and short-term firm services.

and aggregators bear the responsibility for their own supplies. Islander East Customers will have access to supplies off the North American pipeline grid via the Algonquin pipeline system. It will be the Islander East Customers' responsibility to obtain transportation capacity for their supplies on the Algonquin system.

VII.

LEASE OF CAPACITY

As an integral part of the Islander East Pipeline Project, Algonquin and Islander East have entered into a Capacity Lease and Operating Agreement ("Lease Agreement") dated June 13, 2001, a copy of which is included in Exhibit I. Pursuant to the Lease Agreement, Algonquin will lease to Islander East, and Islander East will lease from Algonquin, 285,000 Dth/d of capacity on Algonquin's C-1 and C-1 L systems. As detailed more fully in the Algonquin Application and Exhibit F-I, Algonquin proposes to upgrade existing C-1 and C-1 L system facilities from a point near Cheshire, Connecticut, where they directly connect to the Algonquin mainline, to the point of custody transfer between Algonquin and Islander East near North Haven, Connecticut. The proposed upgrade will provide a total of 285,000 Dth/d of capacity to be leased to Islander East.

The Lease Agreement provides that Islander East's use of the leased capacity will be on a firm basis. Islander East will use the leased capacity to provide firm and/or interruptible transportation services to customers of Islander East pursuant to the terms and conditions of its FERC Gas Tariff.

Islander East will pay Algonquin a monthly lease charge of \$334,135, which will be fixed for the primary term of the lease, and an additional charge for the reimbursement of operation and maintenance costs and property taxes that relate to the leased capacity.

The lease charge is designed to recover the cost of the incremental facilities as fully described in the Algonquin Application.

The Commission generally approves lease payments that do not exceed the lessor's firm transportation rates for comparable service over the term of the lease on a net present value basis.¹³ The proposed lease payments do not exceed what Islander East would pay if it had contracted for firm transportation service from Algonquin and, accordingly, should be approved.

Based on the foregoing, Islander East also hereby seeks a waiver of the "shipper must have title" rule with respect to the capacity that it will lease from Algonquin. This capacity will be utilized by Islander East solely for the purpose of providing seamless transportation service to the Islander East Customers from the delivery point into the capacity to be leased from Algonquin by Islander East to the termination of the Islander East facilities.

VIII.

FINANCING, RATES AND TARIFF

Islander East is proposing a capital structure consisting of seventy percent (70%) debt and thirty percent (30%) member-contributed equity. For purposes of Exhibit L, Islander East has assumed that the debt will bear interest at the rate of eight percent (8.0%) for a term of fifteen (15) years. Islander East plans, however, to seek the most favorable financing terms available in the marketplace at the time the project is financed. Islander East will use its actual cost of debt in calculating the rates it files prior to

¹³See *Columbia Gas Transmission Corp., et al.*, 78 F.E.R.C. ¶ 61,030, at 61,113 (1997).

commencement of service. Islander East proposes that the equity component of its capital structure earn a return of fourteen percent (14%). This proposed return on equity, which produces an overall after-tax return of nine and eight-tenths percent (9.8%), reflects the regulatory, contractual, competitive and construction risks (among others) inherent in a new venture of this type. Specifically, Islander East's proposed return on equity and capital structure is consistent with recent Commission orders on major construction projects.¹⁴

Islander East proposes to calculate AFUDC by using the "project financing" approach.¹⁵ Under the "project financing" approach, the *actual* net cost of debt (short-term and long-term) and equity specifically approved for the project is capitalized.¹⁶ Specifically, Islander East proposes to capitalize (i) the net cost of funds required to finance construction of the project; (ii) the interest cost (net of any interest income) of any short-term or long-term debt issued to finance the project; and (iii) the associated cost of common equity based on the application of the proposed return on equity of 14% to the amount of construction costs financed by equity capital.

Included in Exhibit P hereto is the *pro forma* FERC Gas Tariff pursuant to which Islander East will provide transportation service. The terms and conditions of the tariff are structured to conform to the requirements of the Commission's Order Nos. 636, *et seq.* and

¹⁴See *Vector Pipeline L.P.*, 85 F.E.R.C. ¶ 61,083 at 61,303 (1998); *Alliance Pipeline L.P.*, 80 F.E.R.C. ¶ 61,149 at 61,592 (1997).

¹⁵ See, e.g., *Alliance Pipeline L.P.*, 80 FERC ¶ 61,149 (1997).

¹⁶ *Id.* at 61,602-03.

637. The tariff includes the proposed Rate Schedule FTS, under which Islander East will render firm transportation service to the Islander East Customers and the proposed Rate Schedule ITS, under which Islander East will render interruptible transportation service. The tariff also permits negotiated rates.

In that regard, the customers of Islander East subscribing to firm transportation service will be given the option of paying a negotiated rate or a cost-based recourse rate for service under Rate Schedule FTS. As specified in Section 30.2 of the General Terms and Conditions of Islander East's *pro forma* tariff, Islander East will file numbered tariff sheets prior to the commencement of firm transportation service stating the name of the customer paying a negotiated rate, the applicable rate schedule, the quantity to be transported, the negotiated rate and the applicable receipt and delivery points. As required by Commission policy, Islander East will keep separate and identifiable accounts for any quantities transported, billing determinants, rate components, surcharges, and revenue associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I and J in any future NGA Section 4 or Section 5 rate cases.

Islander East proposes that the initial recourse rate for firm transportation service under Rate Schedule FTS will be a monthly reservation rate of \$9.868 per Dth, which is based on the straight fixed-variable rate design methodology. The initial rate for interruptible transportation service under Rate Schedule ITS will be a commodity rate of \$0.3244 per Dth/d. The derivation of these rates is set forth in Exhibit P. The Islander East Customers also will be charged the ACA surcharge as set forth in the tariff.

As discussed in Section V hereof, the KeySpan Companies are required to make elections each year of the first five contract years to increase their contractual entitlements

to a maximum of 295,000 Dth/d by the end of year five. If ANP and AES retain their full volumes as specified in the Precedent Agreements in Exhibit I, it will be necessary for Islander East to file an additional application for a certificate of public convenience and necessity to install compression and/or minor pipeline looping to provide for these additional capacity requirements. However, as explained above in Section V, final capacity commitments are not yet known. The costs related to such an expansion of Islander East's capacity up to 445,000 Dth/d will be rolled in with prior costs to establish new cost of service recourse rates.

IX.

REQUEST FOR PART 284(G) BLANKET CERTIFICATE

Islander East requests that the Commission issue it a blanket certificate of public convenience and necessity pursuant to Section 284.221 of the Commission's Regulations authorizing Islander East to provide transportation service to the customers requesting and qualifying for transportation service under Islander East's FERC Gas Tariff. Islander East hereby states that it will comply with the conditions set forth in Section 284.221(c).

X.

REQUEST FOR PART 157(F) BLANKET CERTIFICATE

Islander East also requests that the Commission grant to it a blanket certificate of public convenience and necessity pursuant to Section 157.204 of the Commission's regulations authorizing future facility construction and operation as set forth in the blanket certificate regulations in Part 157(F) of the Commission's Regulations. Islander East hereby states that it will comply with the terms, conditions and procedures specified in Part 157(F).

XI.

OTHER APPLICATIONS

The Islander East Pipeline Project will interconnect with Algonquin's system near North Haven, Connecticut. Contemporaneously with the filing of the instant Application, Algonquin is filing an application (1) for authorization to construct, own, operate and maintain the Algonquin upgrade facilities and (2) requesting approval to lease capacity to Islander East. As the facilities proposed in the Islander East application extend from the Algonquin system south to Long Island, and an evaluation of the environmental impacts are the same for both applications, Islander East and Algonquin are filing joint Resource Reports (Exhibit F-I attached hereto). This joint filing not only provides an overall picture of the environmental impacts, but also affords the Commission's Environmental Staff an opportunity to save time and reduce duplication of efforts in the evaluation of the environmental impacts of these two projects.

With the exception of the instant Application and the Algonquin Application, Islander East knows of no other Commission applications pending or required under the Natural Gas Act for the proposed Islander East Pipeline Project.

XII.

TIMING FOR APPROVAL

Islander East seeks to provide the firm transportation services proposed herein beginning November 1, 2003, based on the Islander East Customers' Precedent Agreements. Pre-construction activities for the Islander East facilities are scheduled to begin in the summer of 2002 in order to meet the November 1, 2003 in-service date. Accordingly, Islander East respectfully requests that the Commission issue a PD on the

non-environmental aspects of this proposal by December 31, 2001, and a final order granting the authorizations requested herein no later than July 15, 2002. Issuance of a PD by the requested date will allow Islander East and Algonquin the necessary assurances to proceed with financial commitments for long lead time equipment. Additionally, issuance of a final order by July 15, 2002, will allow Islander East to complete construction of the proposed facilities in a manner consistent with the timing required by the new markets to be served and with the construction schedule established in cooperation with local, state and federal environmental agencies and marine recreation, commercial navigation and fishery groups in order to minimize environmental impacts.

XIII.

NOTICE

A Form of Notice suitable for publication in the Federal Register is attached hereto.

XIV.

EXHIBITS

Exhibit A Articles of Incorporation and Bylaws

Attached are copies of the Certificate of Formation and the Limited Liability Company Agreement, as amended, of Islander East.

Exhibit B State Authorizations

Attached. Islander East is a limited liability company duly formed under the laws of the State of Delaware on November 16, 2000. Islander East was qualified to do business in New York and Connecticut on May 21, 2001 and May 17, 2001, respectively. The

purposes for which Islander East was formed are to plan, design, develop, construct, own and provide for the operation and maintenance of the proposed interstate transmission facilities and conduct such business activities that are necessary or incidental in connection therewith.

Exhibit C Company Officials

Attached.

Exhibit D Subsidiaries and Affiliates

Attached.

Exhibit E Other Pending Applications and Filings

Islander East has no other applications or filings pending before the Commission. See Section XI herein.

Exhibit F Location of Facilities

Attached.

Exhibit F-I Environmental Report

Attached as Volume II.

Exhibits G,G-I Flow Diagrams Showing Operating Conditions & Flow Diagram Data

& G-II Attached.

Exhibit H Total Gas Supply Data

Omitted. The Islander East Customers will be responsible for their own gas supply.

Exhibit I, I-1 Market Data

& I-2 Attached.

- Exhibit J Conversion to Natural Gas
Omitted. There is no assumption relating to this application that the
Islander East Customers will convert from other fuels to natural gas.
- Exhibit K Cost of Facilities
Attached.
- Exhibit L Financing
Attached.
- Exhibit M Construction, Operation and Management
Duke Energy will oversee the construction of Islander East's facilities
and will provide operating, supervising, engineering, rates, accounting,
legal, customer service and other similar day-to-day services for
Islander East as operator pursuant to the terms and conditions of the
CO&M Agreement attached hereto.
- Exhibit N Revenues, Expenses and Income
Attached.
- Exhibit O Depreciation and Depletion
Attached.
- Exhibit P Tariff
Attached.

Exhibit Z Documentation of Public Meetings with Agencies, Landowners and other potentially impacted parties.

Attached are copies of Notices of Public Meetings, the Islander East information packet and landowner brochure.

XV.

CONCLUSION

WHEREFORE, Islander East respectfully requests that:

1. The Commission grant Islander East (i) a certificate of public convenience and necessity authorizing the acquisition, construction and operation of natural gas pipeline facilities in Connecticut and New York, approving initial recourse rates and tariff provisions for firm and interruptible transportation services to be rendered by Islander East, and approving the lease of pipeline capacity from Algonquin pursuant to the Lease Agreement, (ii) a blanket certificate of public convenience and necessity pursuant to Part 284(G) of the Commission's Regulations authorizing the transportation of gas for others, and (iii) a blanket certificate of public convenience and necessity under Part 157(F) of the Commission's Regulations authorizing certain facility construction and operation, abandonments and certificate amendments, all as more fully described in the body of this application;
2. The Commission issue a preliminary determination on the non-environmental aspects of the proposal by December 31, 2001, and a final order granting the authorizations requested herein no later than July 15, 2002;
3. This application be disposed of in accordance with the shortened procedures set forth in Rules 801 and 802 of the Commission's Rules of Practice and

Procedure. In that connection, Islander East respectfully requests that the intermediate decision procedure be omitted and waives oral hearing and opportunity for filing exceptions to the decision of the Commission; and

4. The Commission grant such other and further relief as may be proper and appropriate in the premises.

Respectfully submitted,

ISLANDER EAST PIPELINE COMPANY, L.L.C.

By 
Thomas C. O'Connor, Senior Vice President 
Duke Energy Islander East Pipeline Company, L.L.C.
as Operator of Islander East Pipeline Company, L.L.C.

VERIFICATION

THE STATE OF TEXAS)
)
COUNTY OF HARRIS)

Thomas C. O'Connor, being first duly sworn, states that he is Senior Vice President, for Duke Energy Islander East Pipeline Company, L.L.C., as Operator of Islander East Pipeline Company, L.L.C., that he is authorized to execute this Affidavit; that he has read the foregoing statement and is familiar with the contents thereof; and that all allegations of fact therein contained are true and correct to the best of his knowledge and belief.

ISLANDER EAST PIPELINE COMPANY, L.L.C.



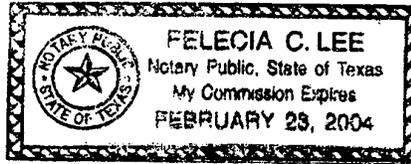
Thomas C. O'Connor
Senior Vice President

SUBSCRIBED AND SWORN TO BEFORE ME this 14th day of June,
2001.

Felecia C Lee Notary Public, State of Texas

My Commission Expires:

02/23/04



ISLANDER EAST PIPELINE COMPANY, L.L.C.

EXHIBIT A

ARTICLES OF INCORPORATION AND BYLAWS

CERTIFICATE OF FORMATION

OF

ISLANDER EAST PIPELINE COMPANY, L.L.C.

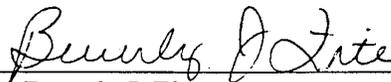
This Certificate of Formation of ISLANDER EAST PIPELINE COMPANY, L.L.C. (the "LLC"), dated November 16, 2000, is being duly executed and filed by Beverly J. Fite, as an authorized person, to form a limited liability company under the Delaware Limited Liability Company Act (6 Del.C. § 18-101, et seq.).

FIRST. The name of the limited liability company formed hereby is ISLANDER EAST PIPELINE COMPANY, L.L.C.

SECOND. The address of the registered office of the LLC in the State of Delaware is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

THIRD. The name and address of the registered agent for service of process on the LLC in the State of Delaware is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation as of the date first above written.



Name: Beverly J. Fite
Authorized Person

LIMITED LIABILITY COMPANY AGREEMENT

OF

ISLANDER EAST PIPELINE COMPANY, L.L.C.

A Delaware Limited Liability Company

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EXHIBITS:

A *Members*

**LIMITED LIABILITY COMPANY AGREEMENT
OF
ISLANDER EAST PIPELINE COMPANY, L.L.C.**
A Delaware Limited Liability Company

This LIMITED LIABILITY COMPANY AGREEMENT OF ISLANDER EAST PIPELINE COMPANY, L.L.C. (this "*Agreement*"), dated as of _____, 2000 (the "*Effective Date*"), is adopted, executed and agreed to, for good and valuable consideration, by DUKE ENERGY ISLANDER EAST PIPELINE COMPANY, L.L.C., a Delaware limited liability company ("*DUKE ENERGY*"), and KEYSpan ISLANDER EAST PIPELINE, L.L.C. a Delaware limited liability company ("*KeySpan*").

RECITALS

1. WHEREAS, KeySpan and Duke Energy hereby enter into this Agreement to develop a new interstate natural gas pipeline delivery system to provide additional pipeline capacity into Long Island, New York, and the New York, New York area (the "*Project*"); and

2. WHEREAS, KeySpan and Duke Energy contemplate that the initial facilities ("*Initial Facilities*") of the Project consist of approximately thirty (30) miles of twenty-four inch pipeline extending from an interconnection with Algonquin Gas Transmission Company's ("*Algonquin*") "*C*" System near New Haven, Connecticut, across Long Island Sound to Shoreham, New York, and approximately ten (10) miles of twenty-four (24) inch pipeline from Shoreham to Brookhaven, New York, together with a compressor station at the interconnection of Duke Energy's pipeline system and Company's proposed twenty-four (24) inch pipeline, interconnections with the local distribution system of KeySpan New York, meter stations, and appurtenant facilities; and

3. WHEREAS, KeySpan and Duke Energy contemplate that the Management Committee of Company will determine the Initial Facilities of the Project; and

4. WHEREAS, the Members are entering into this Agreement to set forth the terms under which the Company will determine and develop the Initial Facilities and any subsequent modifications, expansions, or extensions thereof, to provide for the management of the Company, and to agree on other various matters relating to the Company.

NOW THEREFORE, in consideration of the premises and mutual promises, and agreement herein set forth, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, KeySpan and Duke Energy hereby agree as follows:

**ARTICLE I
DEFINITIONS**

1.01 ***Definitions.*** As used in this Agreement, the following terms have the respective meanings set forth below or set forth in the Sections referred to below:

AAA - Section 12.03(b).

Act - the Delaware Limited Liability Company Act.

Affiliate - with respect to any Person, (a) each entity that such Person Controls; (b) each Person that Controls such Person, including, in the case of a Member, such Member's Parent; and (c) each entity that is under common Control with such Person, including, in the case of a Member, each entity that is Controlled by such Member's Parent.

AFUDC - allowance for funds used during construction.

Agreement - introductory paragraph.

Alternate Representative - Section 6.02(a)(i).

Arbitration Notice - Section 12.02(c).

Arbitrator - Section 12.03(a).

Assignee - any Person that acquires a Membership Interest or any portion thereof through a Disposition; provided, however, that, an Assignee shall have no right to be admitted to the Company as a Member except in accordance with Section 3.03(b)(iii). Subject to Section 3.03(b), the Assignee of a dissolved Member is the shareholder, partner, member or other equity owner or owners of the dissolved Member to whom such Member's Membership Interest is assigned by the Person conducting the liquidation or winding up of such Member. The Assignee of a Bankrupt Member is (a) the Person or Persons (if any) to whom such Bankrupt Member's Membership Interest is assigned by order of the bankruptcy court or other Governmental Authority having jurisdiction over such Bankruptcy, or (b) in the event of a general assignment for the benefit of creditors, the creditor to which such Membership Interest is assigned.

Authorizations - licenses, certificates, permits, orders, approvals, determinations and authorizations from Governmental Authorities having valid jurisdiction.

Bankruptcy or Bankrupt - with respect to any Person, that (a) such Person (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (iv) files a petition or answer seeking for such Person a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against such Person in a proceeding of the type described in subclauses (i) through (iv) of this clause (a); or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of such Person or of all or any substantial part of such Person's properties; or (b) against such Person, a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Law has been commenced and 120 Days have expired without dismissal thereof or with respect to which, without such Person's consent or acquiescence, a trustee, receiver, or liquidator of such Person or of all or any substantial part of such Person's properties has been appointed and 90 Days have expired without the appointment's

having been vacated or stayed, or 90 Days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

Breaching Member - a Member that (a) has committed a failure or breach of the type described in the definition of "Default," (b) has received a notice of the type described in such definition of "Default," and (c) has not cured such failure or breach, but as to which the applicable cure period set forth in such definition of "Default" has not yet expired.

Business Day - any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the State of New York are closed.

Buy-out Right - Section 3.03(b)(vi)(A).

Capital Account - the account to be maintained by the Company for each Member in accordance with Section 4.05.

Capital Contribution - with respect to any Member, the amount of money and the net agreed value of any property (other than money) contributed to the Company by the Member. Any reference in this Agreement to the Capital Contribution of a Member shall include a Capital Contribution of its predecessors in interest.

Certified Public Accountants - a firm of independent public accountants selected from time to time by the Management Committee.

Change Exercise Notice - Section 3.03(b)(vi)(A).

Change of Member Control - with respect to any Member, an event (such as a Disposition of voting securities or other equity interests) that causes such Member to cease to be Controlled by such Member's then Parent; provided, however, that the term "Change of Member Control" shall not include any of the following events

(a) an event that causes such Member's then Parent to be Controlled by another Person;

(b) an event that involves the Disposition of voting securities or other equity interests of such Member but also involves the Disposition of other assets having a greater value than the larger of (i) the fair market value of such Member's Membership Interest or (ii) the Sharing Ratio of such Member times \$400 million;

(c) an event that involves the Disposition of voting securities or other equity interests of a Person that Controls such Member if such Person also owns assets (other than the voting securities or other equity interests of such Member) that have a greater value than the larger of (i) the fair market value of such Member's Membership Interest or (ii) the Sharing Ratio of such Member times \$400 million; and

(d) a Deemed Membership Disposition or a Disposition that is covered by the terms of Section 3.03(b)(ii)

Change Purchasing Member - Section 3.03(b)(vi)(A).

Change Unexercised Portion - Section 3.03(b)(vi)(A).

Changing Member - Section 3.03(b)(vi)(A).

Chairman – the Chairman set forth in Section 6.02(b).

Claim - any and all judgments, claims, causes of action, demands, lawsuits, suits, proceedings, Governmental investigations or audits, losses, assessments, fines, penalties, administrative orders, obligations, costs, expenses, liabilities and damages (whether actual, consequential or punitive), including interest, penalties, reasonable attorney's fees, disbursements and costs of investigations, deficiencies, levies, duties, imposts, remediation and cleanup costs, and natural resources damages.

CO&M Agreement – The agreement in effect between the Company and Operator for the construction, operation, maintenance of the Project(s) of the Company and management of the day-to-day affairs of the Company.

Code - the Internal Revenue Code of 1986.

Commitment – a Member's commitment to make Capital Contribution to the Company. In case of a Modification or Extension in which a Member has elected not to make a Capital Contribution in accordance with Section 7, such Member's Commitment to such Modification or Extension shall be zero prospectively with respect to such Modification or Extension.

Company – Section 2.02.

Confidential Information - information and data (including all copies thereof) that is furnished or submitted by any of the Members, their Affiliates, or the Operator, whether oral, written, or electronic, on a confidential basis to the other Members, their Affiliates, or the Operator relating to such Member, Affiliate or the Operator or in connection with the Project and any and all of the activities and studies performed with respect to the Project or this Agreement, and the resulting information and data obtained from those studies, including market evaluations, market proposals, service designs and pricing, pipeline system design and routing, cost estimating, rate studies, identification of permits, strategic plans, legal documents, environmental studies and requirements, public and governmental relations planning, identification of regulatory issues and development of related strategies, legal analysis and documentation, financial planning, gas reserves and deliverability data, studies of the natural gas supplies for the Project, and other studies and activities to determine the potential viability of the Project and their design characteristics, and identification of key issues. Notwithstanding the foregoing, the term "Confidential Information" shall not include any information that:

(a) is in the public domain at the time of its disclosure or thereafter, other than as a result of a disclosure directly or indirectly by a Member or its Affiliates in contravention of the Confidentiality Agreements, any other Prior Agreement or this Agreement;

(b) as to any Member or its Affiliates or the Operator, was in the possession of such Member or its Affiliates or the Operator prior to the execution of this Agreement, the Confidentiality Agreements or any other Prior Agreement; or

(c) has been independently acquired or developed by a Member or its Affiliates or the Operator without violating any of the obligations of such Member or its Affiliates or the Operator under this Agreement.

Control - the possession, directly or indirectly, through one or more intermediaries, of the following:

(a) (i) in the case of a corporation, 50% or more of the outstanding voting securities thereof; (ii) in the case of a limited liability company, partnership, limited partnership or venture, the right to 25% or more of the distributions therefrom (including liquidating distributions); (iii) in the case of a trust or estate, including a business trust, 50% or more of the beneficial interest therein; and (iv) in the case of any other entity, 50% or more of the economic or beneficial interest therein; and

(b) in the case of any entity, the power or authority, through ownership of voting securities, by contract or otherwise, to exercise predominant control over the management of the entity.

Control Notice - Section 3.03(b)(vi).

Cost - the sum of all costs and expenses, including AFUDC borne by the Company, for the business development, planning, design, engineering, financing, marketing, permitting, construction and other activities required for start-up of the Initial Facilities of the Project or Modification or Extension thereof and securing all Authorizations required therefor.

Day - a calendar day; provided, however, that, if any period of Days referred to in this Agreement shall end on a Day that is not a Business Day, then the expiration of such period shall be automatically extended until the end of the first succeeding Business Day.

Deemed Membership Disposition - with respect to any Membership Interest that is owned by a Person that owns no assets other than such Membership Interest and assets that are directly related thereto, a Disposition of all of the voting securities or other equity interests of such Person.

Default - with respect to any Member,

(a) the failure of such Member to contribute, within 10 Days of the date required, all or any portion of a Capital Contribution that such Member is required to make as provided in this Agreement or

(b) the failure of a Member to comply in any material respect with any of its other agreements, covenants or obligations under this Agreement, or the failure

of any representation or warranty made by a Member in this Agreement to have been true and correct in all material respects at the time it was made.

in each case if such breach is not cured by the applicable Member within 30 Days of its receiving notice of such breach from any other Member (or, if such breach is not capable of being cured within such 30-Day period, if such Member fails to promptly commence substantial efforts to cure such breach or to prosecute such curative efforts to completion with continuity and diligence). The Management Committee may, but shall have no obligation to, extend the foregoing 10-Day and 30-Day periods.

Default Rate - a rate per annum equal to the lesser of (a) a varying rate per annum equal to the sum of (i) the prime rate as published in *The Wall Street Journal*, with adjustments in that varying rate to be made on the same date as any change in that rate is so published, plus (ii) 2% per annum, and (b) the maximum rate permitted by Law.

Delaware Certificate - Section 2.01.

Dispose, Disposing or Disposition - with respect to any asset (including a Membership Interest or any portion thereof), a sale, assignment, transfer, conveyance, gift, exchange or other disposition of such asset, whether such disposition be voluntary, involuntary or by operation of Law, including the following: (a) in the case of an asset owned by a natural person, a transfer of such asset upon the death of its owner, whether by will, intestate succession or otherwise; (b) in the case of an asset owned by an entity, (i) a merger or consolidation of such entity (other than where such entity is the survivor thereof), (ii) a conversion of such entity into another type of entity, or (iii) a distribution of such asset, including in connection with the dissolution, liquidation, winding-up or termination of such entity (unless, in the case of dissolution, such entity's business is continued without the commencement of liquidation or winding-up); and (c) a disposition in connection with, or in lieu of, a foreclosure of an Encumbrance; but such terms shall not include the creation of an Encumbrance.

Disposing Member - Section 3.03(b)(ii)(A).

Disposition Notice - Section 3.03(b)(ii)(A).

Dispute - Section 12.01.

Disputing Member - Section 12.01.

Dissolution Event - Section 13.01.

Effective Date - introductory paragraph.

Encumber, Encumbering, or Encumbrance - the creation of a security interest, lien, pledge, mortgage or other encumbrance, whether such encumbrance be voluntary, involuntary or by operation of Law.

Estimated Cost - the estimated Cost of the Initial Facilities, Modification, or Extension as determined pursuant to Section 7.01(a).