Received: 10/03/2006
Status: CANCELLED
Effective Date: 01/01/2008

Form of Facilities Construction and Reimbursement Agreement
For Electric Generation – Third Party (continued)

14.4 Force Majeure. Notwithstanding anything to the contrary contained herein, a Party shall not be liable for its failure to perform obligations set forth in this Agreement if and to the extent such failure has been occasioned by the occurrence of a force majeure event. The term "force majeure event" as used herein shall include acts of God, fires, floods, storms, hurricanes, strikes, labor disputes, riots, insurrections, acts of war (whether declared or otherwise), unforeseeable acts of governmental or judicial bodies, inability to obtain necessary governmental authorizations and permits applicable to the proposed construction, the breakdown, malfunctioning or failure of all or any part of the subject facilities or necessary equipment caused by an event of force majeure, or any other unforeseeable causes beyond the reasonable control of and which do not involve the fault, negligence or willful misconduct of the Party claiming force majeure. The Parties understand and agree that a failure or inability by either Party to obtain and/or maintain sufficient funds to perform their obligations shall not constitute a force majeure event. If either Party because of an event of force majeure is rendered wholly or partly unable to perform its obligations hereunder, that Party shall be excused from whatever performance is prevented by the force majeure to the extent so prevented, provided that such suspension of performance shall be of no greater scope and of no longer duration than is required by the force majeure, and further provided that (a) the Party claiming force majeure gives the other Party written notice describing the particulars of the occurrence within three (3) days of its occurrence, and (b) the Party claiming force majeure uses reasonable diligence to remedy its inability to perform.

14.5 Confidentiality. The Parties recognize and agree that certain provisions of this Agreement and any related filings with the New York Public Service Commission do or will contain commercially sensitive or confidential trade secret information. Except for such disclosures as may be required by governmental or regulatory requirements, the Parties agree to maintain such provisions in strict confidence. Upon receipt of KeySpan's written consent, which shall not be unreasonably withheld, Customer shall be permitted to disclose this Agreement to potential lenders and investors in the project under a confidentiality agreement of comparable effect and naming KeySpan as a beneficiary thereof.

Issued by: Joseph F. Bodanza, Senior Vice President, Hicksville, NY

Cancelled by supplement No. 33 effective 01/01/2008
Suspended to 01/01/2008 by order in Case 06-G-1186. See Supplement No. 32. Th e supplement filing date was 08/30/2007
Suspended to 09/03/2007 by order in Case 06-G-1186. See Supplement No. 31. Th e supplement filing date was 02/27/2007
Suspended to 03/03/2007 by order in Case 06-G-1186. See Supplement No. 30. Th e supplement filing date was 11/01/2006