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Technical Director – File Reference 1215-001 Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, Connecticut 06856-5116

Via: Email director@fasb.org

Dear Director:

We submit this comment letter regarding the FASB's Exposure Draft on Uncertain Tax Positions on behalf of Keyspan Corporation. KeySpan Corporation (NYSE:KSE) is the largest distributor of natural gas in the Northeast, operating regulated gas utilities in New York, Massachusetts, and New Hampshire that serve 2.6 million customers. These customer-focused businesses are complemented by a portfolio of service companies that offer energy-related products, services, and solutions to homes and businesses. KeySpan is also the largest electric generator in New York State, with approximately 6,650 megawatts of generating capacity that provides power to 1.1 million customers of the Long Island Power Authority (LIPA) on Long Island and supplies approximately 25 percent of New York City's capacity needs. KeySpan also operates LIPA's transmission and distribution system under contract to LIPA. In addition to these assets, KeySpan has strategic investments in pipeline transportation, distribution, storage, and production.

We appreciate the opportunity to comment on the Proposed Interpretation of Statement of Financial Accounting Standards ("SFAS") No. 109 "Accounting for Uncertain Tax Positions" ("UTP ED"). We commend the Financial Accounting Standards Board ("FASB" or "Board") on its efforts to unify the concepts and approach and thus bring greater consistency and comparability to the area. However, Keyspan does not believe that the UTP ED as proposed will achieve the intended purpose.

Recognition and measurement.

Tax assets and liabilities are different from other assets and liabilities. The United States' tax laws are inherently complex and many areas are subject to significant uncertainties. This has been caused, in large part by the actions of Congress and the various state legislatures that began with the tax law changes enacted in 1982. Since that time Congress has chosen to amend, repeal and add numerous provisions to the Internal Revenue Code – more than doubling the size of the basic tax code over this period of time. In doing so, unfortunately, Congress has provided very little guidance in the statutes and legislative history with respect to numerous complex provisions (and related interpretive issues) enacted to curb perceived abuses and raise corporate tax revenues. Instead, Congress has chosen to delegate broad authority to prescribe the necessary rules to the Treasury Department and the Internal Revenue Service (the "Service"). There are

dozens of complex sections of the Internal Revenue Code, that contain a mandate for the Treasury Department to promulgate interpretive regulations, including some that were enacted over twenty years ago, where corporate taxpayers still have little or no guidance.

An enterprise can have many uncertain tax positions covering many taxable periods and involving multiple taxing jurisdictions. The issues underlying these positions are likely to be complex in nature and very significant in amount. Individual issues are sometimes discreet; although the issues are often combined and are only capable of realistic evaluation when considered in the aggregate. An individual issue may arise in more than one taxing jurisdiction and the assessment of that issue in each jurisdiction will be different yet related. In practice, the resolution of an enterprise's many uncertain and complex tax positions is mostly accomplished through negotiation and settlement with the relevant taxing authorities. Thus a company's tax liability to each taxing jurisdiction is often, in significant part, best viewed as one liability composed of several elements rather than many discreet liabilities. While the best approach to quantify this uncertain tax liability involves the assessment of each issue, such assessment needs to take into account that the issues will be settled in aggregate. Accordingly, a system that involves high thresholds for the recognition of individual benefits will frequently yield a result which is clearly overstated.

While some tax positions are unambiguous, many have some unavoidable uncertainty under the law. Under the current UTP ED there will be many situations where the likelihood of a successful resolution of tax positions will fall somewhere between "more likely than not" and "probable." During the time period that a tax controversy remains open, significant systemic overstatement of tax liabilities will result. This will lead to significant reversals of prior period reserves adding to the volatility of corporate tax rates. Those companies operating under greater tax uncertainty will experience a greater overstatement of tax liability than companies with less tax uncertainty. For instance multinational, multi-state enterprises will be prone to reporting a larger overstatement of tax liabilities than a company that operates only in the Unites States and within a single state.

A higher standard should be required to effect a change in judgment.

The proposal in paragraphs 6–9 allows for subsequent recognition of uncertain tax positions that do not initially meet the probable recognition threshold. However, there is no distinction between the requirements for an initial judgment of a tax position and subsequent changes in the judgment of a tax position. In Paragraph B22, it is noted that the Board rejected the concept that an external event would be required to change a judgment about realization of a tax position. We suggest that a change in a tax position resulting from a subsequent judgment require clear and convincing evidence that the situation has significantly changed in a manner that would indicate a revision is both necessary and appropriate. Normally, but not always, this should require an external event such as a meaningful and relevant change in the prevailing tax authorities, expiration of the statute of limitations, or a settlement of a tax examination.

The treatment of income tax related contingent assets should be clarified.

This is best illustrated by an example:

"An enterprise takes a deduction on a tax return, feels very confident that it will ultimately sustain the position, obtains a "should prevail tax opinion" and records the benefit of the deduction in its financial statements without any reserve. However, the Service disagrees and the parties end up in litigation. The enterprise still believes it is correct on the issue and the outside tax advisor that issued the "should prevail" tax opinion confirms that nothing has changed to alter its position. The enterprise can choose to litigate the matter in the Court of Federal Claims, the District Court, or the Tax Court. If the enterprise chooses to litigate in the Court of Federal Claims or the District Court, it must pay the tax and sue for refund; if the enterprise chooses the Tax Court no payment need be made unless and until the enterprise loses."

It would seem that the enterprise's choice of forum would dictate very different accounting treatment. If the enterprise were to choose the Court of Federal Claims or the District Court the enterprise would be required to pay the Service and sue for refund. The receivable generated as a result of paying the cash would be a contingent asset. Under FASB 5, the contingent asset could not be recognized until the issue is resolved in the enterprise's favor, i.e., it is virtually certain that the receivable will be collected. Thus the enterprise would recognize an adverse earnings impact prior to the trial. If, on the other hand, the enterprise were to choose to litigate the issue in the Tax Court it would not be required to recognize an adverse earnings impact, unless and, until it loses the issue in court. This situation would seem to allow the enterprise to choose the timing of when benefits and costs are recorded in its income statement. Thus, two companies having an identical tax dispute, but choosing different forums to contest their dispute, end up with materially different accounting treatments. This strikes us as completely at odds with the stated objective to create comparability and consistency in the financial recording of uncertain income tax positions.

We thank you for the opportunity to provide you with our comments on this important proposed interpretation and would be pleased to discuss our comments with you further at your convenience.

Sincerely,

[s] Theresa A. Balog

Theresa A. Balog Vice President and Chief Accounting Officer