

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

Long Island Power Authority)	
Long Island Lighting Company)	Docket No. TX04-3-000
d/b/a LIPA)	
Cross-Sound Cable Company LLC)	

**MOTION TO INTERVENE AND COMMENTS OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R. §§ 385.211, 385.214) and the Commission’s May 21, 2004 Notice of Filing issued in the above-captioned proceeding, the New York Independent System Operator, Inc. (“NYISO”) moves to intervene, and offers the following comments addressing the Application for an Order Directing Necessary Actions for the Effective Interconnection and Regular Commercial Operation of the Cross-Sound Cable Pursuant to Sections 202 and 210 of the Federal Power Act and a Request for Expedited Action (“Application”) filed by the Long Island Power Authority (the “Authority”), the Long Island Lighting Company d/b/a LIPA (“LIPA”) and the Cross-Sound Cable Company LLC (“CSC LLC”) (collectively, “Applicants”).

I. MOTION TO INTERVENE

The NYISO is the independent body responsible for providing open-access transmission service, maintaining reliability, and administering competitive wholesale electricity markets in the state of New York. Power flowing over the Cross-Sound Cable must be scheduled into or out of (as appropriate) the New York Control Area (“NYCA”), by the NYISO, and the NYISO must ensure that its Cross-Sound Cable related schedules

are consistent with those of ISO-NE. The Application raises both system reliability and wholesale market issues. The Commission's resolution of the Application is expected to directly impact the NYISO's ability to ensure reliable service to loads in the NYCA this summer.

The NYISO therefore has a direct and substantial interest in this proceeding that cannot be adequately represented by any other party. The NYISO should be permitted to intervene in this proceeding and become a party hereto for all purposes.

II. COMMENTS

A. The NYISO Supports the Application

The NYISO supports the Applicants' request that the Commission authorize the "regular commercial operation"¹ of the Cross-Sound Cable. Southeastern New York State is among the most congested locations in the United States in terms of electric transmission. Transmission paths to Long Island must either go through New York City, which presents extraordinary technical difficulties and involves huge expense, or they must go under the Atlantic Ocean or Long Island Sound.

The Cross-Sound Cable is one of only two underwater cables connecting Long Island to Connecticut. Two other cables connect Long Island to Westchester County, New York. When operational, the Cross-Sound Cable could provide up to 23% of Long Island's summer import capability. Its existence could also provide Connecticut with access to Long Island capacity, including "quick start" combustion turbine capacity

¹ The Applicants define "regular commercial operation" as being consistent with the scope of operation that was occurring over the CSC prior to its removal from service on May 9, 2004. The NYISO is presently capable of supporting this level of service. For reasons explained in greater detail in Section II.B., below, the NYISO cannot support any effort in this Docket to tie the operation of the Cross-Sound Cable to the NYISO's implementation of the Interim Scheduling Procedure that is pending before the Commission in Docket No. ER04-791-000.

during reserve deficiency conditions. The Cross-Sound Cable is capable of providing reliability and economic benefits to both Long Island and Connecticut.

In New York, the amount of generating and other resources necessary for the State and its localities to maintain reliability is calculated in accordance with criteria imposed by the Northeast Power Coordinating Council and the New York State Reliability Council. The NYISO's determination of the locational Installed Capacity ("ICAP") requirement for Long Island assumes that the Cross-Sound Cable would be available in the event of an emergency. The NYISO has determined that 5008 MW of generating capacity has to be physically available on Long Island to satisfy locational ICAP requirements.

If the Cable is not available to provide emergency support this summer, Long Island will require additional generating capacity physically located on the Island to maintain the same level of reliability that would exist if the Cross-Sound Cable were available to provide assistance. Therefore, unless Long Island successfully procures additional generation for the summer, it will have a higher-than-expected risk of service outages if the Cross-Sound Cable is not available to meet emergency conditions.² The NYISO is aware that LIPA is attempting to procure additional generating capacity to make up for the potential loss of the Cross-Sound Cable. In its Application, LIPA states that the cost of these replacement capacity resources is expected to be in the range of fifteen to twenty million dollars. *See* Affidavit of Edward J. Grilli at ¶ 7.

² As explained above, the 5008 MW locational ICAP requirement applicable to Long Island this summer was predicated upon the assumption that the Cross-Sound Cable would be made available to meet emergency conditions (via a Department of Energy emergency order, or otherwise). ICAP requirements, including locational ICAP requirements, are set by the NYISO in advance of the relevant capability period. ICAP requirements are based on expected system conditions, and may not reflect actual operating conditions. For this reason, the NYISO does not revise ICAP requirements once the relevant capability period begins.

While the Cross-Sound Cable can certainly provide benefits to the NYCA, it is also available to assist Connecticut and New England for reliability purposes under emergency conditions. Indeed, one of the primary purposes of interties, such as the Cross-Sound Cable is to buttress the reliability of interconnected control areas. While New England has added more generating capacity in recent years than New York, it still periodically requires imports from New York to serve its own electrical load. For example, at times last winter there was not enough natural gas available for some power plants in New England to operate. Fortunately, New England was able to draw upon generating capacity in New York to meet its needs through interties connecting the two regions. The Cross-Sound Cable provides an additional path for imports from New York into New England.

For the NYISO, and other entities responsible for planning and/or operating the transmission grid in a manner that satisfies reliability requirements, the uncertainty regarding the operating status of the Cross-Sound Cable presents a serious problem. The Cable exists, but the NYISO doesn't know whether to assume that it will be available in either the near or long term. Absent federal action resolving the controversy over the Cable's operation, the New York and New England regions will continue to face uncertainty about the availability of the Cross-Sound Cable's transmission capacity to meet normal and emergency conditions. This uncertainty is more than a mere inconvenience. It can cause needless expense and inefficiency, as illustrated by LIPA's present efforts to procure emergency generating capacity on Long Island. As the Commission is well aware, electric generation and transmission facilities take many years to plan, finance, license and construct. Continued uncertainty regarding the Cross-Sound

Cable's operation can either result in deferral of necessary resource planning and implementation (until the controversy is resolved) or, even worse, unnecessary construction. System planners may not be able to defer alternative construction projects pending final resolution of the Cable's availability and, instead, may be required act to preserve reliability by constructing facilities that would duplicate some or all of the benefits that can already be provided by the Cross-Sound Cable.

The NYISO further believes that the operation of the Cross-Sound Cable will increase the potential economic benefits available from the inter-regional electric markets by providing additional transmission capacity to support cross-boundary transactions. The ultimate purpose of the Commission's efforts to restructure the electric industry is to provide electric consumers with the benefits of open market competition. Expansion of the regional and inter-regional scope of wholesale electricity markets depends on adequate inter-regional transmission facilities, and new avenues for cross-control area exchanges of capacity and energy, such as the Cross-Sound Cable. The NYISO supports FERC's policies and agrees that expanded regional electricity markets will maximize the benefits of electric restructuring for consumers.

B. The NYISO's Implementation Concerns

On the first page of the Application, the Applicants request that the Commission order the "regular commercial operation" of the Cross-Sound Cable, and in footnote 1 explain that "regular commercial operation" is intended to encompass "the same scope of operations that was occurring over the CSC as of May 9, 2004, prior to the CSC's removal from service." The NYISO is presently capable of complying with an order requiring the "regular commercial operation" of the Cross-Sound Cable as requested by

the Applicants. However, the NYISO is not presently capable of permitting entities other than LIPA to reserve transmission service over the Cross-Sound Cable, nor does the NYISO expect that it will be able to make so-called “secondary service” (service to Market Participants other than LIPA) available in time for the 2004 summer peak.

In Docket No. ER04-791-000³ the NYISO filed proposed tariff revisions that would permit entities other than LIPA to schedule Imports and Exports at the Shoreham Proxy Generator Bus once these entities had obtained Advance Reservations over the Cross-Sound Cable.⁴ However, due to the unexpected rescission of DOE Order No. 202-03-2 on May 7, 2004, the Cross-Sound Cable was de-energized and, after consulting with LIPA, the NYISO ceased its efforts to implement an Interim Scheduling Procedure that would enable secondary service over the Cable. Within the next several days, the NYISO will file a formal request that the Commission defer action on the proposed tariff revisions the NYISO filed in Docket No. ER04-791-000.

Even if the Commission were to approve LIPA’s Application on an expedited basis, the NYISO is not presently capable of committing to the implementation of the Interim Scheduling Procedures it proposed in Docket No. ER04-791-000 by a date certain. The delay that resulted from the rescission of the DOE’s Order No. 202-03-2 has caused the NYISO to miss a software “testing window” during which its system simulator was available to test the software necessary to implement the Interim Scheduling Procedure. As the implementation date for the NYISO’s all-encompassing

³ See *Proposed Interim Scheduling Procedures for External Transactions at the Shoreham Proxy Generator Bus and Request for Waiver of Sixty Day Notice Period of the New York Independent System Operator, Inc.*, Docket No. ER04-791-000 (filed April 30, 2004).

⁴ Advance Reservations for service over the Cross-Sound Cable may be acquired by purchasing them directly from LIPA, or by acquiring (voluntary or default) release Advance Reservation on the CSC LLC node of the NEPOOL Regional Transmission Group OASIS.

Real Time Scheduling (“RTS”) software draws near, the NYISO’s ability to schedule sufficient time to test other software applications has become extremely limited. In addition, it will no longer be possible to satisfy the conditions under which LIPA agreed to pay for the implementation of the Interim Scheduling Procedure.⁵ In particular, it will not be possible to implement the Interim Scheduling Procedure in time for the 2004 summer peak period.

Due to (1) the cessation of the NYISO’s development efforts for a period of approximately one month, (2) the extremely limited availability of the facilities necessary to test new software, and (3) the lack of an appropriate funding source, the NYISO is unable at this time, to commit to a date certain for implementing its Interim Scheduling Procedures for External Transactions at the Shoreham Proxy Generator Bus. However, if the Commission grants LIPA’s Application, the NYISO will consult with LIPA regarding the feasibility and viability of making some form of secondary service over the Cross-Sound Cable available prior to the June, 2005, expected in-service date of the NYISO’s long-term solution to scheduling at the NYCA’s interfaces with controllable lines.

C. Comments On Statements Made by LIPA

While the NYISO generally supports the Application, it contains some statements with which the NYISO disagrees. In particular, the NYISO does not agree that its present scheduling procedures “fully accommodate” third party use of the Cross-Sound Cable, as the Applicants suggests on page 8 of their Application. The NYISO does not expect third-party use of the Cross-Sound Cable to be “fully accommodated” by the

⁵ The NYISO is opposed to requiring all New York Market Participants to pay for the development of software that is designed to permit the adequate interconnection of a single, specific merchant transmission facility (the Cross-Sound Cable). *See* the NYISO’s Motion to Intervene and Protest in Docket No. ER03-600-000 (March 24, 2003).

NYISO's scheduling procedures until the NYISO's long-term generic controllable line software is in place. This software cannot be implemented until after the NYISO's RTS software is in place this fall. The long-term solution is expected to be available by June, 2005.

Second, the NYISO does not agree with certain contentions regarding the use to which the 1385 cable is presently being put. The 1385 cable is an alternating current ("A/C") facility that is treated by NYISO and ISO-NE as part of the overall New York/New England interface. Under certain system conditions, scheduling flows over the 1385 cable can decrease the overall capability of the NYISO/ISO-NE interface. For this reason, the 1385 cable has been reserved for reliability purposes, to handle emergency flows. However, LIPA and all other Market Participants are presently permitted to schedule economic transactions at the Proxy Generator Bus representing the total A/C interface transfer capability between New York and New England. LIPA's contention (set forth in the last sentence of paragraph 8 of Mr. Parmelee's Affidavit) that LIPA is "precluded from scheduling economic transactions" over the 1385 cable ignores the fact that the cable is treated as part of the overall New York/New England A/C interface and that LIPA is capable of scheduling economic transactions to New England at the NYISO's New England Proxy Generator Bus.

III. COMMUNICATIONS

Copies of correspondence concerning this filing should be served on:

Robert E. Fernandez, Vice President and General Counsel
Mollie Lampi, Assistant General Counsel
Alex M. Schnell
Belinda F. Thornton, Director of Regulatory Affairs
New York Independent System Operator, Inc.
3890 Carman Road
Schenectady, NY 12303
Tel: (518) 356-8707
Fax: (518) 356-8825
rfernandez@nyiso.com
mlampi@nyiso.com
aschnell@nyiso.com
bthornton@nyiso.com

Arnold H. Quint
Ted J. Murphy
Hunton & Williams LLP
1900 K Street, N.W.
Washington, D.C. 20006
Tel: (202) 955-1500
Fax: (202) 778-2201
aquint@hunton.com
tmurphy@hunton.com

IV. CONCLUSION

The NYISO respectfully requests that the Commission grant its motion to intervene in this proceeding and authorize the operation of the Cross-Sound Cable in a manner that is consistent with the comments set forth above.

Respectfully submitted,

/s/ Alex M. Schnell
Robert E. Fernandez
Alex M. Schnell
New York Independent System Operator, Inc.
290 Washington Avenue Extension
Albany, New York 12303
Tel: 518-356-8707
Fax: 518-356-7570

June 1, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party designated on the official service list compiled by the Secretary in Docket No. TX04-3-000 in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2003).

Dated at Albany, New York this 1st day of June, 2004.

/s/ Alex M. Schnell _____
Alex M. Schnell
New York Independent System Operator
290 Washington Ave. Extension
Albany, New York 12303
518-356-8707