

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

Cross-Sound Cable Company, LLC

)

Docket No. ER03-600-000

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

Pursuant to Rules 211, 212 and 214 of the Commission’s Rules of Practice and Procedure,¹ and the Commission’s March 12, 2003 *Notice of Filing*, the New York Independent System Operator, Inc. (“NYISO”) hereby moves to intervene and protest the Cross-Sound Cable Company, LLC’s (“CSC LLC”) proposed new Cross-Sound Cable (“CSC”) reassignment procedures.² The Commission should reject the new procedures unless CSC LLC or the Long Island Power Authority (“LIPA”) agrees to assume all of the costs of integrating them with the NYISO's existing dispatch model and accepts an integration plan that will avoid disrupting the NYISO staff’s existing project priorities . If the Commission accepts new reassignment procedures without such a commitment then it should, at a minimum, defer any action on CSC LLC’s proposal until the NYISO can work with stakeholders, and with ISO New England Inc. (“ISO-NE”), to determine the most cost-effective alternative way to support the new procedures. In either case, the Commission should deny CSC LLC’s request for a March 3, 2003 effective date and allow the NYISO a reasonable time to implement new procedures.

¹ 18 C.F.R. § 385.211, 212, and 214 (2002).

² See *Revised Compliance Filing, TransÉnergie U.S., Ltd.*, Docket No. ER03-600, March 3, 2003 (March 3 Filing).

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II. 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 New York State. The NYISO has no obligation to provide open-access transmission service over the CSC, which is administered by ISO-NE and is governed by the New England Power Pool's ("NEPOOL") open-access transmission tariff.³

Because the CSC connects to New York, the NYISO has already allocated staff resources to modeling this facility in the NYISO's dispatch and billing software. The proposed new reassignment rules will require additional time and resources to make further software modifications. The extent of these costs depends on the characteristics of the CSC reassignment rules. If the NYISO were forced to accept reassignment procedures that were developed without regard for the way its software operates, or its staff resources are allocated, its expenses would increase and other important NYISO market and seams initiatives would be delayed. The

³ See *New England Power Pool*, 99 FERC ¶ 61,338 (2002); *order granting clarification*, 100 FERC ¶ 61,259 (2002).

NYISO therefore has a direct and substantial interest in this proceeding that cannot be adequately represented by any other party and should be permitted to intervene herein.

III. Protest

A. CSC LLC's "Revised Compliance Filing" Is Actually a New Proposal that Must Be Scrutinized as Closely as Any Other New Tariff Filing

Although CSC LLC has depicted its proposed procedures as a "revised compliance filing," the reality is that they differ so much from the original CSC reassignment procedures that they should be treated as an entirely new proposal. The Commission staff implicitly recognized this when it did not put the "revised compliance filing" in the same docket as the original reassignment procedures and instead initiated a new proceeding.⁴ The Commission should accordingly scrutinize the newly proposed assignment procedures as closely as it would any new tariff filing. It should not rush to accept them without carefully evaluating the effect they will have on entities, like the NYISO, that were not involved in their development.

In particular, the Commission should review whether new reassignment procedures are necessary to satisfy its policy concerns. The original reassignment procedures were accepted by the Commission in 2000.⁵ The NYISO has taken steps to implement them by modeling the CSC as a generator bus. This approach was fully consistent with the original reassignment procedures, which were based on Order No. 888's reassignment rules, and fully adequate to support CSC service under them. Although the Commission has expressed concern that there are insufficient safeguards to prevent transmission withholding on the CSC, it has not found that the

⁴ Indeed, it appears that CSC LLC's proposal could not lawfully be considered a compliance filing because the order that CSC LLC purports to comply with imposed a compliance obligation on ISO-NE, not CSC LLC. *See New England Power Pool*, 102 FERC ¶ 61,112 at P 18 (2003).

⁵ *See TransÉnergie U.S., Ltd.*, 93 FERC ¶ 61,289 at 61,973 (2000).

original reassignment procedures were deficient.⁶ Because the Commission has previously found that the Order No. 888 reservation and reassignment rules create incentives that will prevent withholding,⁷ it is not clear why new reassignment procedures are necessary now. The March 3 Filing provides very little explanation of the rationale for its proposals. The Commission should carefully consider whether they are justified.

B. The Commission Should Not Accept the New Reassignment Procedures Unless CSC LLC Agrees to Pay All Implementation Costs and to Support an Implementation Approach That Will Not Impose New Burdens on the NYISO Staff

The March 3 Filing does not specify who will pay the costs of implementing the new reassignment procedures in New York. Based on CSC LLC's comments in other proceedings, however,⁸ it appears that CSC LLC intends to shift the costs of the required software and system integration to the NYISO, and thus to New York customers. This is inconsistent with unambiguous precedent applicable to merchant transmission facilities. The Commission has repeatedly held that merchant transmission developers must assume the entire financial risk associated with their projects and not may not shift those risks by imposing new grid charges on

⁶ The Commission has implied that withholding on the CSC is a potential problem because there is no mechanism to allow entities other than LIPA to take advantage of unused capacity. *New England Power Pool*, 102 FERC ¶ 61,112 at PP 17-18 and n. 17 (2003). It is not clear whether the Commission had the original reassignment procedures, which allow LIPA to voluntarily reassign unused capacity, in mind but it clearly did not expressly repudiate them.

⁷ See *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,692-93, 31,694-97 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part, remanded in part on other grounds sub nom. Transmission Access Policy Study Group, et al. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 122 S. Ct. 1012 (2002) ("Order No. 888").

⁸ See *Comments of Cross-Sound Cable Co., LLC*, Docket No. ER03-246-000 at 3, 5-7 (March 17, 2003).

other customers.⁹ The Commission should thus reject the new reassignment procedures, unless CSC LLC or LIPA, if it is has agreed to assume responsibility for financing the CSC, commits to pay all the costs of implementing them.

It is also inappropriate and patently unfair to the NYISO's market participants to require the NYISO to divert staff and resources to satisfy CSC's open access obligations and away from broad market enhancement and seams resolution initiatives that the NYISO and its stakeholders have given a higher priority. Thus, in addition to requiring CSC LLC to pay the costs, the Commission should require CSC LLC to support an implementation approach that will avoid disrupting those other initiatives and minimize the burdens on NYISO staff. Such an alternative approach is available. The NYISO has suggested to both CSC LLC and LIPA that expanded secondary service over the CSC could best be instituted by retaining an independent third party scheduling entity to provide the NYISO with aggregated CSC schedules. This solution would permit the NYISO to support the more developed secondary service proposed by CSC without having to undertake major software work.¹⁰ If CSC LLC, or LIPA, agreed to fund this approach the NYISO believes that it could be implemented in the near term without prejudicing the progress of other projects.

C. If CSC LLC Does Not Accept Its Obligation to Pay CSC Implementation Costs, the Commission Should Defer Action on the March 3 Filing To Allow the NYISO to Identify a More Efficient and Cost Effective Approach, and to Determine an Appropriate Project Priority

Prior to the March 3 Filing, the NYISO did not anticipate that CSC LLC would submit new reassignment procedures that would go beyond the Order No. 888 reservation regime by

⁹ See, e.g., *Neptune Regional Transmission System, LLC*, 96 FERC ¶ 61,147 at 61,634 (2001); *TransÉnergie U.S., Ltd.*, 91 FERC ¶ 61,230 at 61,837 (2000).

¹⁰ As is noted below, it is also possible that other alternative implementation approaches could be viable.

including a “use it or lose it” requirement.¹¹ Nor was there any reason for the NYISO to expect that CSC would seek to make such a system effective on the same day that it was filed. The filing was not considered through the NYISO’s usual stakeholder processes.¹² Moreover, the NYISO was not a party to the NEPOOL proceeding that reportedly inspired CSC to file the new procedures.¹³ In short, CSC LLC’s approach represents an end-run around the NYISO’s Commission-approved stakeholder, budgeting and project prioritization processes. Under the circumstances, if the Commission does not find that CSC LLC, as the merchant developer, must bear the costs of integrating secondary service across the cable with the NYISO’s existing dispatch software, the Commission should give the NYISO staff and stakeholders a chance to develop a cost-effective and efficient implementation plan. It should also reject CSC LLC’s attempt to impose delay on other market participants. Instead, the Commission should allow the NYISO’s Project Prioritization Team (“PPT”) to determine the project’s relative priority.

Ordinarily, a stakeholder advocating a new market or seams project would introduce its proposal in the appropriate NYISO stakeholder committee. If a proposal obtained the requisite level of stakeholder support, and was approved by the NYISO’s independent Board of Directors, its relative priority would be established by the NYISO’s PPT. This procedure permits the NYISO to make coherent staffing plans, maximize its limited resources, complete work on the highest priority projects first, and ensures that all projects are undertaken as efficiently as possible.

¹¹ See March 3 Filing at 2 and Attachment A at ¶ 9.

¹² Neither CSC LLC nor TransÉnergie U.S. Ltd. are New York market participants and neither is active on the NYISO stakeholder committees. As is noted below, a plan to increase secondary service over the CSC was previously considered by the PPT and assigned a relatively low priority.

¹³ See March 3 Filing at 2, citing *New England Power Pool*, 102 FERC ¶ 61,112 (2003).

The secondary service concepts that are included in the March 3 Filing were previously evaluated through the normal PPT procedures and assigned a relatively low project priority. Allowing CSC LLC to bypass these procedures would undermine the NYISO's ability to achieve the PPT's objectives, reward CSC LLC for making its end run, and set a bad example for future project sponsors. It would also be inconsistent with Commission precedent recognizing that ISO stakeholder processes should be respected.¹⁴

Supporting the new reassignment procedures envisioned by the March 3 Filing would require the NYISO to make major software and system changes to accommodate more flexible secondary transmission service. The NYISO would need, at a minimum, to create a new external proxy bus for the CSC. This change would effect all NYISO systems, from the initial bidding mechanisms to the final billing processes, and would require extensive new software development. It would also necessitate new rules to prevent gaming associated with having two New York proxy buses representing New England. The upgrades would be expensive and would take time to implement. The NYISO staff's preliminary estimate is that implementing the proposed reassignment procedures in their current form would require more than four thousand

¹⁴ See, e.g., *New York Independent System Operator, Inc.*, 90 FERC ¶ 61,319 (2000) (rejecting alternative ICAP recall bid proposal put forward by a single party in opposition to a system approved by the NYISO's stakeholder committees); *USGen New England, Inc.*, 90 FERC ¶ 61,323 (2000) (rejecting unilaterally filed contract for system restoration services); *New England Power Pool*, 90 FERC ¶ 61,168 (2000) (expressing preference for consensus market redesign proposal in New England); *Sithe New England Holdings, LLC and Sithe New Boston, LLC v. New England Power Pool and ISO New England Inc.*, 86 FERC ¶ 61,283 (1999); *reh'g denied*, 88 FERC ¶ 61,080 (1999) (rejecting a market participants attempted unilateral revision of a complex arrangement developed by an ISO); *PJM Interconnection, L.L.C.*, 84 FERC ¶ 61,212 at 62,035 (1998) (“[W]e emphasize that in accepting PJM’s proposed revisions . . . we deferred to the judgment of the PJM ISO and its Board concerning a regional solution to an identified regional problem based on what we understand is a broad, if not unanimous, consensus.”)

hours of staff time.¹⁵ It is also likely that certain changes will require tariff or market rule revisions that cannot be instituted without taking the time to prepare filings and obtain Commission approval.

Making such a large commitment to the CSC would divert resources from other initiatives that have already been mandated by the Commission or given a high implementation priority by market participants through the PPT process. Most notably, the NYISO believes that its ongoing effort to resolve seams with neighboring ISOs and achieve early compliance with the Commission's SMD proposals would be compromised if it had to make implementing new CSC reassignment procedures its top priority. While the NYISO shares the Commission's view that it is important to ensure the full utilization of CSC capacity, this objective should not automatically be presumed to be more important than any other. The NYISO is already prepared to support CSC operations and accept both day-ahead and real-time CSC schedules in the event that the facility becomes operational. It is also prepared to support CSC capacity reassignments under the Order No. 888 model. The marginal benefits of allowing more extensive secondary service over the CSC appear to be considerably smaller than the benefits that other seams and market initiatives, which CSC LLC would have the NYISO postpone, would foster.

CSC LLC does not appear to have considered the implications of its proposal for the NYISO or to have thought about alternatives that could satisfy the Commission's withholding concerns without imposing heavy burdens on other parties. Given that commercial service over the CSC cannot begin until ongoing litigation in Connecticut is resolved, and that even CSC LLC

¹⁵ NYISO staff developed this estimate in the course of the PPT process which resulted in expanded secondary service over the CSC being assigned a relatively low priority.

acknowledges that this will not occur until “later this year,”¹⁶ there is time to consider and resolve the issues that CSC's self-interested proposal raises.

For all of the reasons specified above, if the Commission declines to require CSC LLC to pay all of the costs of implementing the new reassignment procedures and to relieve the NYISO staff's implementation burdens it should defer action on the procedures in their current form. If the Commission concludes that the original reassignment procedures are no longer sufficient it should give the NYISO adequate time to consider alternatives that would achieve the Commission's policy objectives more efficiently and cost-effectively. As was noted above, the NYISO staff has already determined that retaining a third party scheduling intermediary to compile scheduling data would permit the NYISO to support secondary service over the CSC without the expense and delay of setting up a new proxy bus. Other alternatives may also exist but it will be impossible to discover them without allowing a reasonable time to assess options. Deferring action will also permit the PPT to determine the relative importance of CSC-related software changes *vis-à-vis* other projects.

The NYISO believes that this effort could best be conducted through its normal stakeholder procedures without the need for a formal technical conference. Commission staff would certainly be welcome to participate in the stakeholder process.

D. The Commission Should Not Accept CSC LLC's Proposed Effective Date

Regardless of how the Commission responds to the preceding recommendations it should not accept CSC LLC's proposed March 3 effective date. Even in the absence of technical implementation difficulties that exist here, the Commission's policy is to grant retroactive or

¹⁶ See March 3 Filing at 2.

same day effective dates only when extraordinary circumstances are present.¹⁷ The March 3 Filing made no showing that would justify a departure from the normal sixty day notice period and clearly falls short of demonstrating the need for a same day effective date.

Moreover, as a practical matter, the NYISO obviously will not be in a position to retroactively meet a March 3 deadline. The Commission has previously recognized that the NYISO should not be required to begin expensive work on new system and software developments until the rules to be implemented are firmly established.¹⁸ CSC LLC's proposal has not yet been accepted for filing and may be substantially modified by the Commission. Given that the CSC is currently tied up in litigation, and that the proper allocation of the costs of providing secondary service remains to be determined, the NYISO does not intend to begin work to support new reassignment procedures until there is a clear mandate from the Commission. The NYISO therefore respectfully asks that if the Commission accepts the new reassignment procedures that it at least give the NYISO a reasonable time to study the implementation problems, develop an implementation plan, and propose a more realistic effective date.

¹⁷ See *Central Hudson Gas & Electric Corp., et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

¹⁸ See, e.g., *KeySpan-Ravenswood, Inc. v. New York Independent System Operator, Inc.*, 101 FERC ¶ 61,230 at PP 26-27 (2002) ("We find convincing NYISO's arguments for delaying the development of appropriate software until it is certain which tariff revisions are required, recognize NYISO's reluctance to expend funds and staff resources unnecessarily, and agree that manual implementation is inadvisable as a stop-gap measure.")

V. Conclusion

The NYISO respectfully asks that the Commission grant its motion to intervene in this proceeding and grant the relief requested herein.

Respectfully submitted,

NEW YORK INDEPENDENT
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March 24, 2003

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. ER03-600-000, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2002).

Dated at Washington, DC this 24th day of March, 2003.

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