

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Cross-Sound Cable Company, LLC
Cross-Sound Cable Company (New York), LLC
TransÉnergie HQ, Inc.
TransÉnergie U.S. Ltd.
United Capital Investments, Inc.
BBI CSC LLC

Docket No. EC06-31-000

ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued February 1, 2006)

I. Introduction

1. On November 23, 2005, Cross-Sound Cable Company, LLC (Cross-Sound), on behalf of itself and TransÉnergie HQ, Inc. (TEHQ); TransÉnergie U.S. Ltd. (TEUS); United Capital Investments, Inc. (UCI); Cross-Sound Cable Company (New York), LLC (CSC-NY); and BBI CSC LLC (BBI CSC) filed an application under section 203 of the Federal Power Act (FPA)¹ requesting authorization for the disposition of jurisdictional facilities through the transfer of all of the membership interests in Cross-Sound from UCI, TEHQ, and TEUS (the Sellers) to BBI CSC (the Buyer). The jurisdictional facility (CSC Project) is a high voltage transmission line that runs between the electric grids operated by the Independent System Operator for New England (ISO-NE) and the Independent System Operator for New York (NYISO). Cross-Sound provides transmission services to the Long Island Lighting Company (LIPA).

2. The Commission has reviewed the proposed transaction under the Commission's Merger Policy Statement.² We will authorize the proposed transaction, as we find that it

¹ 16 U.S.C. § 824b (2000); Pub. L. No. 109-58, § 1289, 119 Stat. 594, 982-83 (2005) (amending section 203 of the FPA). The disposition of facilities will occur after the Energy Policy Act of 2005 amendment to the FPA becomes effective.

² See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 Fed. Reg. 68,595 (Dec. 19, 1996), FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, (continued...)

will not have an adverse effect on competition, rates or regulation and is thus consistent with the public interest.

II. Background

A. Description of the Parties

3. Cross-Sound is a limited liability company formed to own and operate the CSC Project. The CSC Project is a 24-mile long, 330 megawatt high voltage direct current transmission system that runs between New Haven, Connecticut and Brookhaven, New York. The CSC Project thus runs between the electric grids operated by ISO New England, Inc. (ISO-NE) and the New York Independent System Operator (NYISO). Cross-Sound provides transmission services to LIPA under a long-term firm transmission capacity purchase agreement.

4. The Sellers own all of the issued and outstanding membership interests in Cross-Sound. Specifically, TEUS owns 74 percent; UCI owns 25 percent; and TEHQ owns one percent. TEHQ is a wholly-owned subsidiary of Hydro-Quebec, an agent of Quebec's Government. Hydro-Quebec is engaged primarily in providing electric utility services in Canada. TEUS is a wholly-owned subsidiary of TEHQ. UCI is a wholly-owned subsidiary of UIL Holdings Corporation. UIL Holdings Corp. is the parent of The United Illuminating Company, which provides electric utility services in Connecticut.

5. The Buyer, BBI CSC, is a special purpose company formed to acquire all of the Cross-Sound membership interests. BBI CSC is an indirect, wholly-owned subsidiary of Babcock & Brown Infrastructure Limited (BBIL). BBIL and Babcock & Brown Infrastructure Trust (BBIT) form Babcock & Brown Infrastructure (BBI). BBI is a specialized infrastructure investment fund listed on the Australian Stock Exchange. Its purpose is to invest in, own and manage long-term infrastructure assets around the world.

79 FERC ¶ 61,321 (1997) (Merger Policy Statement); *see also Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 Fed. Reg. 70,983 (Nov. 28, 2000), FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh'g*, Order No.642-A, 94 FERC ¶ 61,289 (2001) (Merger Filing Requirements).

6. BBI CSC and its affiliates own interests in assets located in Australia, New Zealand, Europe, and the United States. In the United States, their interests include 335 megawatts of existing wind power generation facilities plus 216.5 megawatts of wind power generation and 400 megawatts of transmission facilities under development.³

B. The Proposed Transaction

7. TEUS, UCI and TEQH will sell all of the Cross-Sound membership interests to BBI CSC. Simultaneously with the closing of the purchase, BBI CSC will transfer to Cross-Sound funds necessary to discharge all of Cross-Sound's obligations under a loan agreement among it, Hydro-Quebec, and UIL Holdings. After the transaction, Cross-Sound will be a wholly-owned direct subsidiary, and CSC-NY will be a wholly-owned indirect subsidiary, of BBI CSC.

III. Notice of Filing and Responsive Pleadings

8. Notice of this filing was published in the *Federal Register*, 70 Fed. Reg. 73,463 (2005), with comments, protests or interventions due on or before December 19, 2005. LIPA filed a timely intervention and protest. ISO-NE filed a timely intervention and comments. ISO-NE filed one answer to the protest and Cross-Sound filed two answers.

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept ISO-NE's and Cross-Sound's answers because they have provided information that assisted us in our decision-making process.

B. Consistency with the Public Interest

10. Section 203(a) of the FPA provides that the Commission must approve a disposition of facilities if it finds that the disposition "will be consistent with the public interest." The Commission's analysis of whether a disposition is consistent with the

³ The facilities under development include 216.5 megawatts of wind power generation facilities in California, New Jersey, Pennsylvania, and Texas and a 400 megawatt, 55-mile high voltage transmission line under San Francisco Bay.

public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation. As discussed below, we find that the proposed transaction is consistent with the public interest and will not adversely affect competition, rates, or regulation. The Energy Policy Act of 2005 requires that the Commission also determine that the disposition will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest.

1. Effect on Competition

11. Applicants state that the proposed transaction will not adversely affect competition. They note that the CSC Project operates under the NEPOOL Open Access Transmission Tariff (OATT) approved by the Commission. The Applicants state that BBI CSC currently does not own any generation in the relevant geographic markets and thus has no incentive to deny transmission service or impose any barriers to entry by other suppliers. Applicants also maintain that when the wind generating capacity under development by affiliates of BBI CSC in Pennsylvania and New Jersey goes into commercial operation, the output of those projects will be committed under long-term contracts, and the amount of generation involved is *de minimis*. Additionally, the Applicants assert that BBI CSC cannot impose any other barriers to market entry by other suppliers that would raise competitive market concerns because neither it nor its affiliates own any scarce resources or inputs to generation that would permit it to do so. We agree with the Applicants that the proposed transaction will not adversely affect competition.

2. Effect on Rates

12. Applicants state that the proposed transaction will have no adverse impact on the rates of wholesale customers. They state that Cross-Sound provides firm transmission service for the entire capacity of the CSC Project to LIPA under long-term contracts. In addition, transmission capacity not needed by LIPA will be sold in the secondary market under Schedule 18 of ISO-NE's OATT. The Applicants state that the proposed transaction will have no effect on the rates, terms or conditions of service under the long-term contracts with LIPA or on the Schedule 18. We agree with the Applicants that the proposed transaction will not adversely affect rates.

3. Effect on Regulation

13. In the past, as explained in the Merger Policy Statement and the Merger Filing Requirements, the Commission's primary concern with the effect on regulation of a transaction involved possible changes in the Commission's jurisdiction when a registered holding company was formed, thus invoking the jurisdiction of the Securities and

Exchange Commission. Here, that is not a concern because the Applicants state that the transaction will close after the date of repeal of the Public Utility Holding Company Act of 1935 and section 318 of the FPA becomes effective.⁴ Therefore, the transaction will not raise any *Ohio Power*⁵ issues that could affect the Commission's ability to regulate transactions within a registered public utility holding company system.

14. Applicants state that the Commission's jurisdiction will be unaffected by the transaction, and that the proposed transaction will have no effect on state regulatory jurisdiction. We note that no party has raised concerns about the proposed transaction's effect on state or federal regulation. Also, no state has indicated that it lacks jurisdiction to consider the transaction's effect on retail rates. Accordingly, we conclude that federal and state regulation will not be impaired.

15. When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired absent access to the parent company's book and records. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. Our enhanced authority under section 301(c) is an important factor in our approval of the transaction.

4. Cross-Subsidization

16. Applicants argue that none of them are affiliated with an associate company that is a traditional public utility or electric utility with captive wholesale or retail customers in the United States. Thus, applicants submit that there are no concerns with cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Subject to our ability to examine books and records, discussed above, we conclude that the proposed transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.

⁴ The Energy Policy Act of 2005 repeals the Public Utility Holding Company Act of 1935 and section 318 of the FPA, effective February 8, 2006.

⁵ *Ohio Power Co. v. FERC*, 954 F.2d 779 (D.C. Cir. 1992), *cert. denied*, *FERC v. Ohio Power*, 506 U.S. 981 (1992) (*Ohio Power*).

5. Protest and Comments

17. In its protest, LIPA states that it has three areas of concern regarding the transaction. First, LIPA is concerned that staffing levels at Cross-Sound have declined. LIPA fears that, in the future, staff levels may be insufficient to ensure reliable and efficient transmission service. Second, LIPA is concerned that the transaction may affect the secondary market. Third, LIPA seeks assurances that the transaction will not adversely affect the timely execution of a Merchant Transmission Owners Agreement (MTOA) between Cross-Sound and ISO-NE. LIPA requests that the Commission condition approval of the transaction to alleviate its concerns.

18. In its answer, Cross-Sound contends that LIPA's concerns are speculative and irrelevant. Cross-Sound states that it has and will continue to maintain staffing adequate to provide reliable service and to meet all of its obligations. Cross-Sound states that LIPA provided no evidence to suggest that continued operation and enhancement of the secondary market over the CSC Project will not occur. It states that LIPA has provided no evidence to suggest that timely execution of the MTOA will not occur.

19. In its answer, ISO-NE contends that the Commission should alleviate LIPA's concern regarding timely execution of the MTOA by directing the new owner of Cross-Sound to complete negotiations with ISO-NE regarding the MTOA so that the agreement can be filed within 90 days of the date of the ownership transfer. It requests that the Commission make clear that BBI CSC, as the new owner, will be subject to all oversight authorities of ISO-NE under its OATT.

20. We reject the requests of LIPA and ISO-NE that we impose conditions on our approval of Cross-Sound's application. We are considering here only the transaction proposed in the application, and approve the proposed transaction pursuant to our analysis under section 203(a) of the FPA. LIPA states that the drop in staffing has already occurred, so it is not a result of this transaction. In addition, ISO-NE characterizes the MTOA as not being required, but instead as helping to avoid any future disagreements among interested parties. LIPA's and ISO-NE's concerns are unsubstantiated and speculative; they have provided no evidence that the proposed transaction is not consistent with the public interest or that it will adversely affect competition, rates, or regulation. We expect the Buyer to provide reliable service consistent with its obligations and representations, and LIPA or others to file a complaint if it does not do so.

The Commission orders:

(A) The transaction is authorized upon the terms and conditions and for the purposes set forth in the application.

(B) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever new, pending, or which may come before this Commission.

(C) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(D) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders, as appropriate.

(E) Applicants shall notify the Commission within 10 days of the date that the disposition and acquisition of jurisdictional facilities has been consummated.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.