

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Cross-Sound Cable Company, LLC

Docket No. ER00-1-004

ORDER ON MOTION FOR WAIVER OF  
FORM NO. 1 FILING REQUIREMENT

(Issued September 22, 2004)

1. In this order, the Commission grants Cross-Sound Cable Company, LLC's (CSC LLC) motion for waiver of the Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others (Form 1) filing requirement. This order promotes the development of merchant transmission projects by reducing filing requirements. The development of merchant transmission projects, in turn, benefits customers by promoting competition through non-traditional means.

**Background**

2. On June 1, 2000, the Commission approved TransÉnergie U.S. Ltd.'s (TransÉnergie) application to sell transmission rights on the Cross-Sound Cable at negotiated rates under a merchant transmission framework.<sup>1</sup> The Cross-Sound Cable is a 330 MW 24-mile underwater direct current electric transmission cable, which connects the New England ISO at New Haven, Connecticut and the New York ISO near the decommissioned Shoreham nuclear power station on Long Island, New York. As a result of its open-season process, TransÉnergie sold all of the transmission capacity on the Cross-Sound Cable to what is now the Long Island Power Authority (LIPA) under a 20-year contract. On June 15, 2001, TransÉnergie's rights and obligations were transferred to CSC LLC.<sup>2</sup> The Cross-Sound Cable commenced commercial operations in August 2003.

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<sup>1</sup> TransÉnergie U.S. Ltd., 91 FERC ¶ 61,230 (2000) (*TransÉnergie*).

<sup>2</sup> TransÉnergie U.S. Ltd., 95 FERC ¶ 61,410 (2001).

### **Motion for Waiver of the Form 1 Filing Requirements**

3. On July 15, 2004, CSC LLC filed a motion requesting waiver of the Form 1 filing requirement.<sup>3</sup> CSC LLC notes that, in *TransÉnergie*, the Commission found that its proposed merchant transmission project was analogous to a merchant generator. CSC LLC contends that, in several ways, however, it is not treated similarly to a merchant generator.<sup>4</sup> Also relevant here, CSC LLC is currently required to file a Form 1, whereas a merchant generator is not.

4. CSC LLC contends that one of the primary purposes of the Form 1 is to scrutinize jurisdictional utilities' costs for cost-of-service rate regulation purposes. CSC LLC however, does not have cost-of-service rates, but provides its service pursuant to negotiated rates. In addition, as noted in the *TransÉnergie* order, CSC LLC has no market power and has no captive customers.<sup>5</sup>

5. CSC LLC further notes that in the past the Commission granted a complete waiver of Part 141 filing requirements to a stand-alone generating utility selling its output at negotiated rates.<sup>6</sup> In *Sun-Peak*, the Commission stated "there is no compelling reason to subject a utility, such as Sun-Peak, operating a single facility and selling all that facility's output to one customer under a long-term fixed rate contract, to the full measure of our traditional regulatory requirements."<sup>7</sup>

6. Based on these factors, CSC LLC states that the Form 1 filing requirement should not apply to it. CSC LLC therefore requests waiver of the Form 1 filing requirement.

### **Notice of Filings and Responsive Pleadings**

7. Notice of CSC LLC's filing was published in the *Federal Register*, 69 Fed. Reg. 44,527 (2004), with interventions and protests due on or before August 4, 2004. None was filed.

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<sup>3</sup> 18 C.F.R. § 141.1 (2004).

<sup>4</sup> Unlike a merchant generator, CSC LLC must still carry costs on its books in accordance with the Uniform System of Accounts, 18 C.F.R. Part 101 (2004), and its books are auditable and subject to examination by the Commission pursuant to Part 41 of its regulations. 18 C.F.R. Part 41 (2004).

<sup>5</sup> See *supra* notes 1, 2.

<sup>6</sup> Nevada Sun-Peak Limited Partnership, 86 FERC ¶ 61,243 (1999) (*Sun-Peak*).

<sup>7</sup> *Id.* at 61,874.

**Discussion**

8. In analyzing CSC LLC's request for waiver, the Commission needs to weigh (1) the need for the Commission and the public to have access to the information contained in the Form 1, and (2) developing policies which will promote competition. For public utilities with cost-based rates, the information provided by the Form 1 is necessary to ensure that rates are reasonable. However, CSC LLC does not have cost-based rates. Rather, like a merchant generator with market-based rate authority, its rates are negotiated rates. Also, like merchant generators with market-based rate authority, CSC LLC has no captive customers. Further, since CSC LLC did not sell transmission capacity on the Cross-Sound Cable to any affiliates, concerns about affiliate abuse are not present here. Finally, the Cross Sound Cable is a fully controllable, direct current facility that is not integrated with the transmission grids of New England or New York in the same way that an interconnected alternating current transmission facility would be.

9. On balance, especially given no immediate need for this information, the Commission will grant CSC LLC's motion for waiver of the Form 1 filing requirement.<sup>8</sup>

**The Commission orders:**

CSC LLC's motion for waiver of the Form 1 filing requirement is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

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<sup>8</sup> We add that CSC LLC's accounts are, it states, maintained in accordance with the Uniform System of Accounts, and subject to Commission audit should the need ever arise. Likewise, CSC LLC files Electronic Quarterly Reports.