

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

**Cross-Sound Cable Company, LLC**            )

**Docket No. TS04-179-\_\_\_\_\_**

**CROSS-SOUND CABLE COMPANY, LLC's  
REQUEST FOR A WAIVER OF THE  
STANDARDS OF CONDUCT**

Pursuant to Order No. 2004<sup>1</sup> and section 358.1(d) of the Commission's regulations, Cross-Sound Cable Company, LLC ("CSC LLC") hereby submits this request for an exemption of the standards of conduct promulgated in Order No. 2004. In response to the Commission's January 16, 2004 "Guidance on Informational Filings and Implementation Procedures for Standards of Conduct under Order No. 2004," CSC LLC made a compliance filing (dated February 9, 2004) setting forth its plan to comply with Order 2004 by June 1, 2004. In that filing, CSC LLC represented that it would make a filing in the near future requesting an exemption of the standards of conduct. By the instant filing, CSC LLC respectfully requests that the Commission grant the requested exemption prior to June 1, 2004, the effective date for the new standards of conduct.

**I. Executive Summary**

Section 358.1(d) of the Commission's regulations allows for an exemption from the standards of conduct for "good cause." For the following reasons, good cause exists for the Commission to grant CSC LLC such an exemption from the standards of conduct. First, CSC LLC shares no Transmission Function employees with its Energy Affiliates. Thus, the

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<sup>1</sup> *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *reh'g pending*.

opportunity for sharing non-public transmission information with its Energy Affiliates, the principle harm Order No. 2004 seeks to avoid, is remote. Second, because a non-affiliate holds all of the firm transmission capacity rights on the Cross Sound Cable (“CSC”), the opportunity for CSC LLC to preferentially benefit an Energy Affiliate is absent. Finally, the CSC is a discrete and limited transmission system that acts as a direct connection between control areas and not as part of an integrated transmission grid. The Commission’s previous policy pursuant to the electric standards of conduct under Order No. 889<sup>2</sup> provided for exemptions from the standards of conduct for such facilities.<sup>3</sup>

For all these reasons, any concerns that CSC LLC will preferentially benefit an Energy Affiliate are vitiated, and good cause is thus demonstrated for an exemption from the standards of conduct consistent with Order No. 2004. CSC LLC sets forth below additional information in support of its request for an exemption.

## **II. General Information in Support of Request for Exemption from Order No. 2004**

In support of this request for an exemption, following is a description of CSC LLC’s ownership structure, organizational structure and its Energy Affiliates.

### **A. General Background of CSC LLC**

CSC LLC is the sole owner of the CSC, a 24-mile 330 MW bi-directional HVDC transmission line that runs under the Long Island Sound between New Haven, Connecticut and

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<sup>2</sup> *Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct*, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 31,035 (Apr. 24, 1996); Order No. 889-A, *order on reh’g*, 62 FR 12484 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,049 (Mar. 4, 1997); Order No. 889-B, *reh’g denied*, 62 FR 64715 (Dec. 9, 1997), FERC Stats. & Regs., Regulations Preambles 1996-2000 ¶ 31,253 (Nov. 25, 1997).

<sup>3</sup> See *Black Creek Hydro, Inc.* 77 FERC ¶ 61,232 at 61,941 (1996).

Shoreham, New York.<sup>4</sup> As an entity that owns electric transmission facilities used for transmission of electric energy in interstate commerce, CSC LLC is a “public utility that owns, operates or controls, facilities used for the transmission of electric energy in interstate commerce,” and is thus a Transmission Provider subject to Order No. 2004.<sup>5</sup> CSC LLC does not engage in any other business activities other than those activities incident to the CSC.

On June 1, 2000, the Commission approved TransÉnergie U.S. Ltd.’s (“TEUS”) proposal to provide transmission service over the CSC through an open season process whereby CSC LLC negotiated the sale of rights to transmit power over the CSC for the first 20 years.<sup>6</sup> As a result of the open season, Long Island Lighting Company, d/b/a LIPA (“LIPA”) agreed to purchase 100 percent of the CSC transmission rights.

The Negotiated Rate Order granted certain waivers of regulations and authorizations of the type “routinely granted to power marketers,” which did not include a waiver of the current electric standards of conduct in Part 37 of the Commission’s regulations, as such a waiver was not of the type routinely granted to power marketers. Since CSC LLC did not (and still does not) have any Wholesale Merchant Function that engages in sales of electricity, the electric standards of conduct previously set forth in 18 C.F.R. § 37.4 were not applicable to CSC LLC. Thus, CSC LLC had no reason, until now, to seek a waiver of the standards of conduct.

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<sup>4</sup> The CSC is presently operational as a result of Order No. 202-03-3, issued on August 28, 2003 by the Secretary of Energy authorizing full-time commercial operation of the CSC until the Secretary determines that the emergency situation cited in such order no longer continues to exist.

<sup>5</sup> 18 C.F.R. § 358.3(a)(1).

<sup>6</sup> *TransÉnergie U.S. Ltd.*, 91 FERC ¶ 61,230 (2000) (the “Negotiated Rate Order”). On June 15, 2001, the Commission granted TEUS’ and CSC LLC’s request to transfer to CSC LLC all rights and obligations authorized by the Commission in its June 1, 2000 Order and all subsequent orders. *TransÉnergie U.S. Ltd.*, 95 FERC ¶ 61,410 (2001). Accordingly, CSC LLC will refer herein to all rights sought for the CSC subsequent to its initial application as being sought by CSC LLC.

B. Organizational Structure and Management of CSC LLC

CSC LLC is a Connecticut limited liability company, 74 percent of which is owned by TEUS, 1 percent of which is owned by TransÉnergie HQ Inc. (“TEHQ”), and 25 percent of which is owned by United Capital Investments, Inc (“UCI”). TEUS is a Delaware corporation and wholly owned subsidiary of Hydro-Québec (“HQ”), a Canadian corporation owned by the Province of Québec, Canada. TEHQ is a Canadian corporation and wholly owned subsidiary of HQ. UCI is a Connecticut corporation and wholly owned subsidiary of United Resources, Inc., which in turn is a wholly owned subsidiary of UIL Holdings Inc., (“UIL”) a publicly traded Connecticut corporation and an exempt public utility holding company.

Other than through its interest in CSC LLC, TEUS does not engage in energy or natural gas commodity markets nor is it involved in transmission transactions in U.S. markets.<sup>7</sup> Accordingly, TEUS is a “parent company” and exempt from the definition of Energy Affiliate pursuant to 18 C.F.R. § 358.3(d)(5)(iii). TEUS’ parent, HQ, is a foreign affiliate and thus exempt from the definition of Energy Affiliate pursuant to 18 C.F.R. § 358.3(d)(5)(i).

However, certain entities owned directly or indirectly by HQ do participate in U.S. energy markets and meet the definition of an Energy Affiliate as set forth in Order No. 2004. H.Q. Energy Services (U.S.) (“HQUS”), a wholly owned affiliate of HQ, participates in U.S. energy markets as a marketer of power (including power produced by HQ in Canada). HQUS sells electric energy in U.S. markets and thus meets the definition for an Energy Affiliate. HQ also holds an indirect ownership interest in Bucksport Energy LLC (“Bucksport Energy”), which owns 72.2 percent of a qualifying cogeneration facility located in Bucksport, Maine. Through ownership interests in various entities, HQ owns 49.9968 percent of the Bucksport Energy

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<sup>7</sup> TEUS is also in the development stage of other proposed transmission projects in the United States, which unlike CSC, have not yet been constructed.

facility.<sup>8</sup> Bucksport Energy commenced operations in January 2001. Bucksport Energy's application for QF certification of the facility was approved by the FERC on July 12, 1999.<sup>9</sup> Bucksport Energy sells electric energy in U.S. markets and thus meets the definition for an Energy Affiliate. HQ holds, indirectly, a 31.8 percent ownership interest in Vermont Gas Systems, Inc. ("VGS"), a natural gas distribution and pipeline company in the United States.<sup>10</sup> It is not clear whether VGS is an Energy Affiliate.<sup>11</sup>

TEHQ is a foreign affiliate that, other than through its one percent interest in CSC LLC,<sup>12</sup> does not participate in U.S. energy markets and thus does not meet the definition of an Energy Affiliate.

CSC LLC's minority owner, UCI, does not engage in energy or natural gas commodity markets and is not involved in transmission transactions in U.S. energy markets and thus does not meet the definition of an Energy Affiliate. UCI is indirectly affiliated through its parent company, UIL, with two Energy Affiliates. An affiliate of UCI, United Bridgeport Energy, Inc., holds a 33.3 percent ownership interest, as a minority investor, in Bridgeport Energy L.L.C. ("BE"), the owner of a gas-fired 520 MW merchant wholesale electric generating facility located

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<sup>8</sup> H.Q. Energy Holding, Inc., a wholly owned subsidiary of HQ, owns 38.88% of Bucksport Energy's membership interest in the facility. MEG Holding US Corporation owns the remaining 61.12% interest of Bucksport Energy's (72.2%) interest in the facility. MEG Holding US Corporation is wholly owned by Multinational Electricity and Gas Corporation, which, in turn, is 50% owned by HQ.

<sup>9</sup> *Bucksport Energy LLC*, 88 FERC ¶ 62,036 (1999).

<sup>10</sup> HQ holds 41.2% of the share capital of Noverco, a Canadian corporation that holds a 100% ownership interest in Gaz Metropolitan, Inc. ("GMI"). GMI is the general partner of Gaz Metropolitan and Company, Limited Partnership ("GMCLP") and holds a 77.4% interest therein. GMCLP holds an indirect (through Northern New England Gas Corporation) 100% percent ownership interest in VGS.

<sup>11</sup> Under the rule as presently written, VGS would be exempt from the definition of an Energy Affiliate, pursuant to section 358.3(d)(5)(v), unless VGS engages in off-system sales.

<sup>12</sup> TEHQ's one percent interest in CSC LLC is considerably less than the 10 percent rebuttable presumption of control used to define an Energy Affiliate in section 358.3(a)(2)(c).

in Bridgeport, Connecticut. The remainder of BE is owned, and the facility is operated by, an affiliate of Duke Energy. The Commission has granted BE market-based rate authority.<sup>13</sup> As a seller of electric energy in U.S. energy markets, BE is an Energy Affiliate as defined in Order No. 2004. UIL also owns the United Illuminating Company (“UI”), a public utility that sells electric energy to residential, commercial and industrial customers in southwest Connecticut.<sup>14</sup> Thus, UI, an indirect affiliate of UCI, also qualifies as an Energy Affiliate as defined in Order No. 2004.<sup>15</sup>

### **III. Factors Supporting CSC LLC’s Exemption from Standards of Conduct**

#### **A. CSC LLC Does Not Share any Employees or Information with its Energy Affiliates**

CSC LLC does not have any employees of its own. CSC LLC has entered into an inter-company services agreement with TEUS that provides for TEUS employees to manage the day-to-day business operations of CSC LLC. The names and titles of these TEUS employees, and a brief description of their responsibilities, are included in Attachment 1. Attachment 1 also lists the officers of CSC LLC, all of whom are TEUS employees. All of these employees in Attachment 1 qualify as “Transmission Function employees” as defined in Order No. 2004.<sup>16</sup>

All of these Transmission Function employees work solely for TEUS and are not shared with CSC LLC’s Energy Affiliates. These employees all work in the TEUS offices in Westborough, Massachusetts. CSC LLC’s Energy Affiliates all work and do business in offices in different states. In the routine course of doing business, these entities do not interact at all.

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<sup>13</sup> *Bridgeport Energy L.L.C.*, 83 FERC ¶ 61,307 (1998).

<sup>14</sup> UI made its Order No. 2004 compliance filing with the Commission on February 9, 2004 in Docket No. TS04-173-000. In that filing, UI noted that due to the deregulation legislation in Connecticut, UI has significantly reduced its merchant function and thus it is investigating the possibility of an exemption or a waiver from Order No. 2004.

<sup>16</sup> 18 C.F.R. § 358.3(j).

Thus, the potential for preferential sharing of non-public information between CSC LLC and its Energy Affiliates is, at best, remote. Thus, CSC LLC meets both the independent functioning requirement set forth in 18 C.F.R. § 358.4 (no sharing of Transmission Function employees with the Energy Affiliates) and the non-discrimination requirements set forth in 18 C.F.R. § 358.5 (no sharing of non-public transmission information with employees of the Energy Affiliates).

B. The CSC's Firm Transmission Capacity is 100 Percent Subscribed by a Non-Affiliate

CSC's transmission capacity is 100 percent subscribed by a non-affiliate -- LIPA. The only transmission capacity available to anyone other than LIPA on the CSC is capacity released or unused by LIPA, which is handled through open and transparent Commission-approved reassignment procedures.<sup>17</sup> As a consequence, CSC LLC has no information to share, nor any economic incentive to share with others (including with its Energy Affiliates), information regarding the use of transmission capacity over the CSC.<sup>18</sup>

C. Order No. 2004 and the Commission's Existing Policy Provide for Exemptions from the Standards of Conduct for Small Transmission Providers.

The Commission recognized in Order No. 2004 that certain small Transmission Providers had previously obtained exemptions for the standards of conduct and grandfathered these exemptions and partial waivers. *Order No. 2004 at P 27*. Cognizant of this existing policy, the Commission stated that Transmission Providers that did not previously obtain an exemption may request an exemption from all or some of the requirements of Part 358. *Order No. 2004 at P 28*.

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<sup>17</sup> The Commission recently accepted, subject to a compliance filing requiring minor modifications, reassignment procedures for the CSC to allocate unused or unscheduled transmission capacity. *Cross-Sound Cable Company, LLC*, 106 FERC ¶ 61,116 (2004).

<sup>18</sup> CSC's operators physically operate the CSC pursuant to instructions received from ISO New England Inc. on a real-time basis. Thus, CSC LLC employees have no practical opportunity to share non-public transmission related information with the employees of its Energy Affiliates.

Granting CSC LLC a waiver of the standards of conduct would be consistent with existing Commission precedent, where the Commission granted exemptions from the standards of conduct in Order No. 889 to entities that “owned limited and discrete transmission facilities (facilities that do not form an integrated transmission grid).”<sup>19</sup> CSC LLC likewise only owns “a discrete and limited transmission system.” The CSC is a 24-mile direct current (“DC”) intertie between the transmission systems in New England and New York that does not form a part of the integrated transmission grid. The reason is that, as a DC facility, the CSC is separately controllable. As compared with other utilities that have received exemptions from the standards of conduct, CSC LLC’s facilities are far more “limited and discrete.”<sup>20</sup> Clearly CSC LLC would have been entitled to request a waiver under Order No. 889 and thus would have been grandfathered under Order No. 2004. Therefore, CSC LLC should receive an exemption from Order No. 2004.

In sum, CSC LLC requests that FERC grant it an exemption from the standards of conduct in Part 358 on the basis of all the grounds presented above. Similar to the waivers granted for Order No. 889, CSC LLC is willing to accept the exemption subject to such an exemption being granted unless and until an entity complains that CSC LLC has used information about its transmission system to unfairly benefit CSC LLC’s Energy Affiliates.<sup>21</sup>

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<sup>19</sup> See *Black Creek Hydro, Inc.* 77 FERC ¶ 61,232 at 61,943-44 (1996), where certain small utilities (e.g., Madison Gas & Electric Company) with transmission systems far more extensive than CSC LLC received waivers from Order No. 889.

<sup>20</sup> As CSC LLC noted earlier, the only reason it did not seek a waiver from the standards of conduct in Order No. 889 was that such a waiver was unnecessary, as CSC LLC lacks a wholesale merchant function.

<sup>21</sup> *Black Creek Hydro* at p. 61,941.

**IV. Conclusion**

Wherefore, CSC LLC requests that the Commission grant it a complete exemption of the standards of conduct promulgated in Order No. 2004 for the reasons set forth above.

Respectfully submitted,

**CROSS-SOUND CABLE COMPANY, LLC**

/s/ William S. Lavarco

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March 10, 2004

**ATTACHMENT 1**

## **Officers of Cross-Sound Cable Company, LLC (“CSC LLC”)**

(Note: CSC LLC does not have any employees. The officers below do not perform any physical operational activities with respect to the Cross Sound Cable.)

*Jeffrey A. Donahue, Chairman and Chief Executive Officer*

Mr. Donahue is also President and Chief Executive Officer of TransÉnergie U.S. Ltd. (“TEUS”). Mr. Donahue is Chairman of CSC LLC’s Management Committee and serves as CSC LLC’s chief executive officer.

*Raymond L. Coxe, President*

Mr. Coxe is also Senior Vice President of Transmission Marketing for TEUS. Mr. Coxe serves as President and chief operating officer for CSC LLC.

*Michael D. Ernst, Secretary*

Mr. Ernst is also Secretary of TEUS, as well as Vice President for Permitting and Siting. Mr. Ernst serves as Secretary to the CSC LLC Management Committee.

### **TEUS employees that operate the Cross Sound Cable:**

*Bradley D. Railing, Vice President of Projects*

Mr. Railing is responsible for implementation, engineering, procurement and construction (“EPC”) contract administration, commissioning, operations, maintenance and other development support for the Cross Sound Cable and all other TEUS projects.

*Brian W. Reinhart, Asset Manager*

Mr. Reinhart is responsible for the operations and maintenance of the Cross Sound Cable, and reports to Mr. Railing. Mr. Reinhart is one of four 24/7 operators of the Cross Sound Cable.

*Ryan M. Constable, Project Engineer*

Mr. Constable provides technical and operations support to the Cross Sound Cable and other TEUS projects. Mr. Constable reports to Mr. Railing. Mr. Constable is one of four 24/7 operators of the Cross Sound Cable.

*Jed A. Leighfield, Project Engineer*

Mr. Leighfield provides technical and operations support to the Cross Sound Cable and other TEUS projects. Mr. Leighfield reports to Mr. Railing. Mr. Leighfield is one of four 24/7 operators of the Cross Sound Cable.

*Jorgen B. Yngstrom, Project Engineer*

Mr. Yngstrom provides technical and operations support to the Cross Sound Cable and other TEUS projects. Mr. Yngstrom reports to Mr. Railing. Mr. Yngstrom is one of four 24/7 operators of the Cross Sound Cable.

**TEUS employees involved in day-to-day decision-making over the CSC:**

In addition to the TEUS employees identified and described above who also serve as officers for CSC LLC (Messrs. Donahue, Coxe, and Ernst) and the above list of TEUS employees with operational responsibilities over the Cross Sound Cable, the following TEUS employees are involved in day-to-day decision-making for the Cross Sound Cable and would be expected to know non-public transmission information about the Cross Sound Cable:

*José A. Rotger, Director of Regulatory Policy*

Mr. Rotger manages regulatory affairs for the Cross Sound Cable and TEUS' other projects, and reports to Mr. Coxe.

*John J. Miller, Consulting Engineer*

Mr. Miller coordinates technical and commercial issues (such as EPC contract and interconnection agreement matters) associated with the Cross Sound Cable and other TEUS projects. Mr. Miller reports to Mr. Donahue.

*James P. Nash, Project Director*

As Project Director for the Cross Sound Cable, Mr. Nash was responsible for the evaluations to confirm the Cross Sound Cable design, prepared and achieved project environmental licenses and permits, and supervised the installation of the submarine cable. Mr. Nash reports to Mr. Ernst.

*Paul N. Steckley, Consulting Engineer*

Mr. Steckley manages technical studies (including interconnection studies) associated with the Cross Sound Cable and TEUS' other projects. Mr. Steckley is also responsible for maintaining the Cross Sound Cable node on the NEPOOL OASIS. Mr. Steckley reports to Mr. Donahue.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Cross-Sound Cable Company, LLC

Docket No. TS04-179-\_\_\_

NOTICE OF FILING

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Take notice that on March 10, 2004, Cross-Sound Cable Company, LLC (CSC LLC) filed for an exemption from the standards of conduct in Part 358 of the Commission's regulations. CSC LLC requests that the Commission grant the requested exemption request prior to June 1, 2004, the effective date for the new standards of conduct.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at <http://www.ferc.gov>, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date:

Linda Mitry  
Acting Secretary

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