

170 FERC ¶ 61,293
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Cross Sound Cable Company, LLC

Docket No. ES20-15-000

ORDER ON REQUEST TO ISSUE SECURITIES

(Issued March 31, 2020)

1. On February 12, 2020, Cross Sound Cable Company, LLC (Cross Sound) filed an application pursuant to section 204 of the Federal Power Act (FPA)¹ (Application) seeking Commission authorization to incur obligations and liabilities as guarantor of its parent company, CSCC LLC (CSCC), in an aggregate amount not to exceed \$33 million, to support obligations associated with the operation and financing of the Cross-Sound Cable Project (Cross Sound Project). On March 9, 2020, Cross Sound filed an amendment to the Application (Amendment). We grant the authorization, as discussed below.

I. Application

A. Background

2. Cross Sound states that it owns and provides electric transmission service over the Cross Sound Project, a 24 mile, 330 megawatt high voltage direct current transmission line that runs between the electric transmission grids operated by ISO New England Inc. (ISO-NE) and the New York Independent System Operator, Inc. Cross Sound states that it has one wholly owned subsidiary, Cross Sound Cable Company New York, LLC (CSC New York), that is a party to contracts, leases, and easements related to the Cross Sound Project, but that is not a Commission-jurisdictional public utility.²

3. Cross Sound states that it is a direct, wholly owned subsidiary of CSCC. CSCC also owns CSC Operations, LLC, which provides operations and maintenance services to Cross Sound, but is not a Commission-jurisdictional public utility. Cross Sound states that CSCC is indirectly, wholly owned by AIA Energy North America LLC (AIA Energy), an investment fund formed for the purpose of investing in energy infrastructure

¹ 16 U.S.C. § 824c (2018).

² Application at 1-2.

projects. Cross Sound states that AIA Energy is owned 0.3984 percent by arGo Energy North America MM LLC, 49.8008 percent by the California State Teachers' Retirement System, and 49.8008 percent by Sogra, LLC.³

B. Request for Issuance of Securities

4. Cross Sound explains that in 2015, the Commission authorized it to incur obligations and liabilities of CSCC in an aggregate amount not to exceed \$130.5 million. Cross Sound states that it now seeks authorization for the issuance of an additional \$33 million in privately placed debt securities (Debt Securities).⁴ Cross Sound states that the proceeds of the Debt Securities will be used to support the obligations associated with the operation and financing of the Cross Sound Project, including a comprehensive upgrade of the Cross Sound Project's High Voltage Direct Current Control and Protection System.⁵ Cross Sound further states that the issuance of the Debt Securities is needed to support financing for a capital expenditure event that is necessary to ensure the continued reliable operation of the Cross Sound Project.⁶

5. Cross Sound states that the interest rate for Debt Securities will be determined through arms-length negotiations between CSCC and purchasers of the Debt Securities, but will not exceed a rate of 3.45 percent.

C. Request for Waiver

6. Cross Sound also requests that the Commission grant waiver of the competitive bidding and negotiated placement requirements set forth in sections 34.2(a) and (c)(1) of the Commission's regulations⁷ in relation to the Debt Securities.⁸ Cross Sound explains

³ *Id.* at 2.

⁴ *Cross Sound Cable Company, LLC*, 151 FERC ¶ 62,186 (2015) (2015 Order).

⁵ Application at 3.

⁶ Amendment at 2.

⁷ 18 C.F.R. §§ 34.2(a) and (c)(1) (2019).

⁸ Section 34.2 sets forth the Commission's method of issuance requirements. It states, in part, that utilities may issue securities either by a competitive bid or negotiated placement, provided that competitive bids are obtained from at least two prospective dealers, purchasers or underwriters or negotiated offers are obtained from at least three prospective dealers, purchasers or underwriters. *See* 18 C.F.R. § 34.2(a). These requirements do not apply to short-term debt securities.

that it does not intend to use competitive bidding or negotiated placement with respect to the Debt Securities and that the Debt Securities and instant request for waiver are substantially similar to those authorized by the Commission in the 2015 Order.

II. Notice of Filing

7. Notice of the Application was published in the *Federal Register*, 85 Fed. Reg. 9755 (Feb. 20, 2020), with interventions and protests due on or before March 4, 2020. None was filed. Notice of the Amendment was published in the *Federal Register*, 85 Fed. Reg. 15,772 (March 19, 2020), with interventions and protests due on March 19, 2020. None was filed.

III. Discussion

A. Analysis Under FPA Section 204

8. Section 204(a) of the FPA provides that requests for authorization to issue securities or to assume any obligation or liability as guarantor, endorser, surety, or otherwise in respect of any security of another person shall be granted if the Commission finds that the issuance or assumption: (1) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.⁹

9. In reviewing an application under FPA section 204, the Commission uses an interest coverage ratio calculation to determine whether the issuances for which authorization are sought “will not impair [a public utility’s] ability to perform” service as a public utility.¹⁰ The Commission typically bases its finding that proposed issuances of securities will not impair an applicant’s ability to perform service as a public utility in part upon the applicant’s demonstration that it will have an interest coverage ratio that is 2.0 or higher.¹¹ In making this finding, the Commission reviews the financial statements submitted with an application filed under FPA section 204 and applicant’s calculation of

⁹ 16 U.S.C. § 824c(a).

¹⁰ See, e.g., *Old Dominion Elec. Coop.*, 145 FERC ¶ 61,132, at P 12 (2013); *Startrans IO, LLC*, 122 FERC ¶ 61,253, at P 18 (2008) (*Startrans*).

¹¹ *Startrans*, 122 FERC ¶ 61,253 at P 18 (stating that “this screen is a mid-way number in a range that has been used by lenders and borrowers and provides a buffer against unforeseen, adverse financial events that might impair Startrans IO’s ability to perform as a public utility”).

the interest coverage ratio, which is the sum of income before interest and income taxes divided by total interest expense.¹² The interest coverage ratio is used primarily to provide the Commission with comfort that the financing authorized will not impair an applicant's ability to perform public utility service.¹³ The Commission has stated, however, that whether or not an applicant meets the 2.0 interest coverage ratio screen does not by itself determine whether the Commission will authorize or deny the application.¹⁴ The Commission has approved FPA section 204 applications that have not met the 2.0 interest coverage ratio screen.¹⁵

10. Cross Sound has filed, as Exhibits C, D, and E to the Application, actual and *pro forma* financial statements for the 12-month period that ended December 31, 2019. Exhibit E of the Application shows that Cross Sound has a *pro forma* interest coverage ratio that is below the Commission's 2.0 times interest coverage screen. Nevertheless, Cross Sound explains that it will be able to meet its financial obligations and perform its obligations as a public utility following Commission approval of the Application.¹⁶

11. Cross Sound asserts that there are alternative bases upon which the Commission may conclude that the proposed issuances will not impair its ability to perform public utility service. In particular, Cross Sound asserts that the issuance of the Debt Securities is a one-time event being undertaken to support financing for a capital expenditure that is necessary to ensure the continued operation of the Cross Sound Project. Cross Sound states that, as such, the issuance of the Debt Securities is necessary to ensure that Cross Sound can continue to meet its public service obligations. Further, Cross Sound states that it provides service on the Cross Sound Project pursuant to a long-term contract with the Long Island Power Authority and ISO-NE's Open Access Transmission Tariff, which provides mechanisms for Cross Sound to receive revenue on an ongoing basis and

¹² *Westar*, 102 FERC ¶ 61,186 at P 15 & n.15.

¹³ *Montana Alberta Tie Ltd.*, 128 FERC ¶ 61,217, at P 16 (2009) (citing *Startrans*, 122 FERC ¶ 61,253 at P 18). The Commission has also described the interest coverage ratio as a measure of a utility's ability to meet future debt and interest payments. *Westar*, 102 FERC ¶ 61,186 at P 15.

¹⁴ See, e.g., *Startrans*, 122 FERC ¶ 61,253 at n.7.

¹⁵ See, e.g., *NorthWestern Corp.*, 151 FERC ¶ 61,120 (2015); *ITC Great Plains, LLC*, 147 FERC ¶ 61,005 (2014).

¹⁶ Application at 11, 14-15.

recover prudently incurred costs. Lastly, Cross Sound states that its credit rating with the Kroll Bond Rating Agency is investment grade.¹⁷

B. Commission Determination

12. We find that, although Cross Sound does not meet the Commission's interest coverage ratio screen, Cross Sound has provided other factors that are an alternative basis upon which to conclude that it should reasonably be able to both service the proposed new debt securities, and to continue to be able to provide service as a public utility. Specifically, Cross Sound provides service on the Cross Sound Project pursuant to a long-term contract with the Long Island Power Authority and ISO-NE's Open Access Transmission Tariff, which provides mechanisms for Cross Sound to receive revenue on an ongoing basis and recover prudently incurred costs.

13. On balance, notwithstanding the failure to meet the interest coverage ratio screen, for the reasons given in the prior paragraph, we authorize Cross Sound to issue long-term privately placed debt securities not to exceed \$33 million at an interest rate no higher than 3.45 percent. Cross Sound's proposed issuance of the Debt Securities: (1) will be for a lawful object within the corporate purposes of Cross Sound and compatible with the public interest, is necessary or appropriate for or consistent with the proper performances by Cross Sound of service as a public utility, and will not impair Cross Sound's ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.

14. We grant the requested authorization effective as of the date of this order. Finally, we find good cause to grant the requested waiver of the Commission's competitive bidding and negotiated placement requirements.

C. Westar Restrictions

15. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.¹⁸ First, public utilities seeking authorization to issue debt backed by a utility asset must use the proceeds of the debt for utility purposes. Second, if any utility assets that secure debt issuances are divested or "spun off," the debt must follow the asset and also be divested or spun off. Third, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt must follow the non-utility assets. Specifically, if the non-utility assets are divested or spun off, then a proportionate share of the debt must follow the divested or spun off non-utility asset by being divested or spun off as well. Finally, if utility assets financed by unsecured debt are divested or spun off to another entity, then a proportionate share of the debt must also be divested or

¹⁷ Amendment at 2.

¹⁸ *Westar*, 102 FERC ¶ 61,186 at P 21.

spun off. We will condition our authorization on Cross Sound abiding by these restrictions. Applicant acknowledges an obligation to comply with the four restrictions on secured and unsecured debt specified in *Westar*.¹⁹

The Commission orders:

(A) Cross Sound is hereby authorized to issue debt securities in an amount not to exceed \$33 million.

(B) The authorization is granted effective as of the date of this order.

(C) The authorizations granted in this order are subject to the restrictions specified in the body of this order and the restrictions on secured and unsecured debt as outlined in *Westar*.

(D) Cross Sound is granted waiver from compliance with the Commission's competitive bidding and negotiated placement requirements at 18 C.F.R. § 34.2(a) and (c)(1) (2019).

(E) Cross Sound must file a Report of Securities Issued, under 18 C.F.R. §§ 34.9, 131.43, and 131.50 (2019), no later than 30 days after the sale or placement of long-term debt securities or equity securities, or the entry into guarantees or assumption of liabilities.

(F) The authorizations granted in Ordering Paragraphs (A) and (B) above are without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(G) Nothing in this order shall be construed to imply any guarantee or

¹⁹ Application at 7.

obligation on the part of the United States with respect to any security to which this order relates.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.