

UNITED STATES OF AMERICA 91 FERC ¶ 61,230  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;  
William L. Massey, Linda Breathitt,  
and Curt Hébert, Jr.

TransEnergie U.S., Ltd.

Docket No. ER00-1-000

ORDER APPROVING PROPOSAL SUBJECT TO CONDITIONS

(Issued June 1, 2000)

TransEnergie U.S., Ltd. (TransEnergie) proposes to construct a merchant transmission facility by installing an undersea high-voltage direct current cable between Connecticut and Long Island, New York. TransEnergie requests that the Commission approve its proposal for transmission service over the cable. It further requests that the Commission grant TransEnergie blanket authority to make sales of firm transmission capacity. In this order, the Commission grants TransEnergie's request, subject to conditions.

Background

TransEnergie is the United States transmission development subsidiary of a division of Hydro-Quebec, a utility with generation and transmission facilities located in the province of Quebec, Canada. On October 1, 1999, TransEnergie filed with the Commission, pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d, a petition for an order accepting a tariff offering non-discriminatory transmission service over a 26-mile undersea high-voltage, bi-directional, direct current (DC) cable it proposes to build underneath the Long Island Sound to connect the control areas of the New York Independent System Operator (New York ISO) and the New England Independent System Operator (New England ISO). Additionally, TransEnergie requested that the Commission grant blanket authority to make sales of transmission capacity and "such waivers and authorizations as have been granted by the Commission in similar circumstances."<sup>1</sup>

---

<sup>1</sup> TransEnergie Petition at 1.

In its petition, TransEnergie states that its proposed Cross-Sound Cable (CSC) Interconnector will connect the 345 kilovolt bulk power New England ISO system at a terminal near New Haven, Connecticut with the 138 kilovolt bulk power New York ISO system on Long Island at a terminal near the site of the decommissioned Shoreham nuclear power station. In addition to the 26 miles of buried cable, the facilities will also include land-based high-voltage direct current converter terminal facilities. TransEnergie explains that the cable will be a fully-controlled, direct current electric transmission line and will not be integrated with the alternating current (AC) transmission grids located at either end of the line. TransEnergie states that it has purchased all right-of-ways necessary for constructing the facility. The planned in-service date for the project is May 2002.

TransEnergie states that its proposed tariff is modeled on a power sale tariff, but also includes some aspects of the Order No. 888 pro forma tariff. Specifically, TransEnergie notes that it has included in its proposed tariff provisions for the implementation of a secondary market in tradable transmission rights and that it will assist in monitoring the secondary market.

In its application, TransEnergie observes that the New York and New England markets are currently administered by separate ISOs. TransEnergie will coordinate with these ISOs in the scheduling and operation of its proposed facilities.<sup>2</sup> In addition, TransEnergie commits to cooperating with the development of Regional Transmission Organizations (RTOs) in the Northeast and giving operational control of the interconnector to an RTO that establishes a consistent framework for locational pricing and financial transmission rights.

TransEnergie states that it intends to assume 100 percent of the financial risk of building the interconnector between the New York and New England ISOs. Customers would obtain firm transmission rights to the new capacity, which they could either use or sell in a secondary market. TransEnergie proposes to provide service under negotiated rates that will essentially reflect location-differential costs between the New York and New England markets. TransEnergie emphasizes that current transmission pricing policies are not applicable to the CSC Interconnector "because, unlike traditional

---

<sup>2</sup> Id. at 9-10.

transmission investors who recover their costs from captive customers, investors in the CSC Interconnector will take full market risks and will not be able to exercise market power." <sup>3</sup>

TransEnergie goes on to state that its proposed rates are appropriate for transmission between New York and New England because

---

<sup>3</sup> Id. at 14.

[t]he CSC Interconnector will be a "merchant" transmission project, in the sense that the debt and equity investors in the facility will not have access to a guaranteed revenue stream for CSC transmission service. Unlike almost all other transmission investments in the United States, the owners of the CSC Interconnector will not include in the project's annual costs any mandatory revenue requirement recovered from captive ratepayers through a grid access charge. As a result, the CSC Interconnector will not have the economic safety net of an assured cost recovery under either the traditional integrated utility structure or the emerging RTO structures. Instead, the project's investors will (and must) rely solely upon sales to willing buyers of the transmission rights associated with the project to recover the project's cost and earn any return on their investment. [<sup>4</sup>]

TransEnergie concludes that, because transmission users in New York and New England will financially support the project only to the extent they voluntarily elect to purchase transmission service over the project, "all of the market risks of the project (and the associated stranded cost risks) lie with the project's owners."

---

<sup>4</sup> Id. at 18-19 (emphasis in original).

TransEnergie states that it will not be able to exercise market power by means of the CSC interconnector because of various constraints included in its proposal. In this regard, TransEnergie observes that the Commission has found that competitive conditions exist in the markets served by both ends of the CSC Interconnector, and that as an independent line not part of the integrated AC grid, it "does nothing to constrain these competitive conditions," and may serve to increase competitive generation in those markets.<sup>5</sup> Additionally, TransEnergie proposes that the initial allocation of firm transmission rights will be determined pursuant to a non-discriminatory open-season process, which in its view will "mitigate[] concerns over market power abuses. Any interested party will have an equal opportunity to compete for access to the line."<sup>6</sup>

To assure the Commission that it will not favor any affiliates, TransEnergie represents that it will not allow any of its affiliates to participate in the initial open-season process. After the open-season process, TransEnergie states that it would post and offer for sale available firm transmission rights on its OASIS. Additionally, TransEnergie's proposed tariff specifies that firm transmission rights may be reassigned, and customers may use TransEnergie's OASIS to post the availability of firm transmission rights. TransEnergie states that any capacity not subscribed during the open season will not be sold to an affiliate as a firm scheduling right without TransEnergie seeking authorization from the Commission in a subsequent filing. In any event, TransEnergie contends, "the Commission's market monitoring mechanisms, with which [TransEnergie] commits to cooperate, can assure [that] no market abuse occurs in the secondary market."<sup>7</sup> Finally, TransEnergie observes that scheduling and dispatch over the CSC Interconnector will be by the New York ISO and the New England ISO, neutral parties in this context, which ensures that physical access to the project will be provided in a non-discriminatory manner.

TransEnergie states that its proposal is pro-competitive and will enhance, rather than restrict, access to generation. TransEnergie contends that its proposed rates are consistent with transmission congestion pricing approved by the Commission as part of the New York ISO tariff,<sup>8</sup> as well as the electric generation market, where the

---

<sup>5</sup> Id. at 25.

<sup>6</sup> Id. at 26.

<sup>7</sup> Id. at 27.

<sup>8</sup> Id. at 22, citing Central Hudson Gas & Electric Corporation, et al., 86 FERC ¶ 61,062 at 61,235 (1999), reh'g pending (Central Hudson).

Commission "has routinely permitted the sale of generation at market rates where market power is absent."<sup>9</sup>

---

<sup>9</sup> Id. at 24, citing, e.g., Iowa Power Partners I, LLC, 81 FERC ¶ 61,058 (1997) (Iowa Power Partners).

TransEnergie next asserts that the rate authorization it seeks here can be confined to the narrow circumstances of its proposal, by means of a set of evaluation criteria for the applicability of pricing principles to appropriate merchant transmission projects, which it terms "safe harbor" provisions.<sup>10</sup> These criteria are that the merchant transmission facility must assume full market risk; that the merchant transmission facility must create tradable transmission rights; that an open season process should be employed to initially allocate transmission rights; that the merchant transmission facility must not preclude access to essential facilities by competitors; that the merchant transmission facilities should be subject to market monitoring for market power abuse; that physical energy flows on merchant transmission facilities should be coordinated with, and subject to, reliability requirements of the relevant ISO or RTO; and that merchant transmission facilities should not impair pre-existing property rights to use the transmission grids of inter-connected RTOs or utilities. TransEnergie contends not only that its proposal satisfies the above criteria, but also that "these criteria will give the Commission a basis for identifying with some precision the circumstances in which such treatment is justified and those in which it is not."<sup>11</sup>

TransEnergie requests that the Commission waive the notice requirement of section 35.3(b) of its regulations, 18 C.F.R. § 35.3(b) (1999) because of its need to obtain financing for the project after Commission approval, and because the rationale of the notice provision is not applicable to the pricing it seeks here. Additionally, TransEnergie seeks waiver of regulations and authorizations "routinely granted to power marketers."<sup>12</sup>

Notice of TransEnergie's filing was published in the Federal Register, 64 Fed. Reg. 56,205 (1999), with comments, protests, and motions to intervene due on October 21, 1996, which was subsequently extended until November 1, 1999. Timely motions to intervene raising no substantive issues were filed by the Long Island Power Authority and LIPA (collectively LIPA), and San Diego Gas & Electric Company (SDG&E). A timely motion to intervene supporting TransEnergie's application was filed by Power

---

<sup>10</sup> Id. at 36.

<sup>11</sup> Id. at 37.

<sup>12</sup> Id. at 43, citing Enron Power Marketing, Inc., 65 FERC ¶ 61,305 (1993), on reh'g, 66 FERC ¶ 61,244 (1994); Citizens Power and Light Corp., 48 FERC ¶ 61,210 (1989)); Citizens Energy Corporation, 35 FERC ¶ 61,198 (1986). Additionally, TransEnergie states that it should be subject to the reporting requirements established by these orders.

Development Company, LLC (PDC). Additionally, motions for leave to intervene out of time raising no substantive issues were filed by Vermont Electric Power Company, Inc. (VELCO) and Public Service Electric and Gas Company (PSE&G).

On March 21, 2000, TransEnergie filed with the Commission a supplemental statement to its original proposal, in response to the Commission's Order No. 2000.<sup>13</sup> In its statement, TransEnergie contends that its proposal will help to mitigate constraints between the New York and New England markets by "apply[ing] the same type of market-driven congestion management system advocated by the Commission in Order No. 2000 and approved for application within the [New York]ISO."<sup>14</sup> In this context, TransEnergie emphasizes that "in no event will the CSC Interconnector result in an additional grid access charge or in an increase to an existing grid access charge of either ISO."<sup>15</sup> TransEnergie likewise asserts that its proposal implements incremental entrepreneurial transmission expansion within RTOs, as contemplated by Order No. 2000.

Notice of TransEnergie's supplemental filing was published in the Federal Register, 65 Fed. Reg. 17,404, with comments, protests and motions to intervene due by April 7, 2000. PSE&G filed a second motion to intervene raising no substantive issues. Additionally, on May 16, 2000, LIPA submitted a letter urging that the Commission promptly approve TransEnergie's proposal.

### Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (1999), the timely, unopposed motions to intervene filed by LIPA, SDG&E, PDC and PSE&G serve to make them parties to this proceeding.<sup>16</sup> Additionally, VELCO's motion to intervene is granted, as it was filed before the April 7, 2000 deadline.

---

<sup>13</sup> Regional Transmission Organizations, Order No. 2000, 65 F.R. 809 (2000), FERC Stats. & Regs. ¶ 31,089 (2000), order on reh'g, Order No. 2000-A, 65 F.R. 12,088 (2000), FERC Stats. & Regs. ¶ 31,092 (2000).

<sup>14</sup> TransEnergie Statement at 3.

<sup>15</sup> Id.

<sup>16</sup> We therefore dismiss PSE&G's earlier motion to intervene out of time as moot.

### A. TransEnergie's Proposal

The Commission believes that TransEnergie's "merchant transmission project" can play a useful role in expanding competitive generation alternatives for customers. Because TransEnergie is not a traditional utility, as well as the specific characteristics of this project, the Commission is approving, subject to certain conditions, TransEnergie's proposal to provide service over the interconnector at negotiated rates reflecting location-differential prices.

The Commission agrees with TransEnergie that its proposal enhances competition and market integration by expanding capacity and trading opportunities between the New England and New York markets. For example, the CSC Interconnector, by expanding capacity at the bottleneck located between New York and New England, will allow more energy to flow between two markets which are currently operated separately. With the proposed facilities in place, generation in New England may serve load on Long Island when price differentials warrant it, or vice versa. Thus, TransEnergie's project will provide benefits to electric consumers and producers in both markets while imposing no risk or cost on captive customers in any market. In addition, TransEnergie's proposal creates tradable transmission rights to implement the reassignment requirements of the pro forma tariff and allow those parties with firm transmission rights to sell them in a secondary market. Furthermore, we find that TransEnergie is in a unique position because it does not have any pre-existing transmission network. Additionally, TransEnergie will have no captive customers, *i.e.*, customers located within a franchise area who have no ability to take service from any party other than the local franchise holder.

Since TransEnergie's proposal permits parties with firm transmission rights to arbitrage the generation prices between New Haven and Long Island, the negotiated rates will essentially be limited to the difference between the locational-based marginal prices in the New York and New England markets. Moreover, since any customer in either of these markets may request the ISOs, or their successors, to expand their transmission facilities to provide service at cost-based transmission rates, this establishes an expansion cost cap on TransEnergie's pricing.

While TransEnergie proposes that the Commission approve its proposal as a market-based rate because the CSC Interconnector is more analogous to a new merchant generation plant than to traditional transmission investment, we need not, and do not, decide whether market-based pricing for transmission is appropriate. Rather, the Commission finds that it can approve TransEnergie's proposal to provide service under

negotiated rates on other grounds that are consistent with existing pricing methodologies.

We agree with the premise underlying TransEnergie's proposal that the price customers will be willing to pay for transmission service over the CSC Interconnection will be disciplined, in the first instance, by the difference in generation prices in two locations: the Long Island area of the New York ISO and the New Haven, Connecticut area of ISO New England. The Commission has long permitted transmission-owning public utilities to charge the higher of embedded cost pricing or opportunity cost pricing for service on their transmission facilities.<sup>17</sup> In the past, transmission owners were also engaged in selling power and their opportunity costs were the costs incurred when, as a result of providing transmission service to a third party instead of keeping the transmission capacity for their own use, they had to forego opportunities to reduce generation costs incurred to serve their power customers. Opportunity costs rates were capped, however, at the transmission providers' cost of expansion. TransEnergie, however, is in a different situation. TransEnergie has no power customers of its own, so there are no opportunity costs based on the transmission-provider's own generation costs. Here, rather, the opportunity costs are either the generation savings of the power customers served by TransEnergie's stand-alone transmission line or the savings provided by customers' other alternatives, e.g., new generation. The Commission concludes that TransEnergie's pricing proposal thus represents a form of opportunity cost pricing which, in this situation, is the logical extension of our prior policy.<sup>18</sup>

---

<sup>17</sup> See Pennsylvania Electric Company, 58 FERC ¶ 61,278, reh'g denied, 60 FERC ¶ 61,034, reh'g dismissed, 60 FERC ¶ 61,244 (1992), aff'd, Pennsylvania Electric Company v. FERC, 11 F.3d 207 (D.C. Cir. 1993).

<sup>18</sup> See generally California Independent System Operator Corporation, 89 FERC ¶ 61,153 at 61,436 (1999) (California ISO) (addressing opportunity costs for short-term firm transmission rights).

As noted above, a significant tenet of the Commission's opportunity cost pricing model is that transmission prices based on opportunity costs should be capped at the cost of expanding the transmission system. That is, when congestion costs exceed the cost of expansion, expansion is the cheaper option and should be undertaken. Here, the expansion cost cap is provided through the obligation of the New York ISO and ISO New England, or their successors, to expand transmission at cost-based rates to meet new requests for transmission service, including facilities to provide service across Long Island Sound.

Finally, TransEnergie's pricing proposal is similar to the congestion pricing proposals the Commission has already approved for the New York and PJM ISO.<sup>19</sup> TransEnergie proposes to price its transmission service over the interconnector, which will join the New England and New York energy markets, to reflect these same types of locational-price differentials. Hence, transmission customers will pay no more than the difference in these two locational-based marginal prices. TransEnergie's proposal differs in that the revenues TransEnergie receives from the initial allocation of transmission rights will not be used to defray the existing costs of captive customers (e.g., as a credit to the transmission owner's revenue requirement). We emphasize that this adaptation of opportunity cost pricing is reasonable in the specific context of this case where TransEnergie has no captive customers and assumes full financial risk for the project.

In view of these factors, the Commission accepts TransEnergie's proposed rates, subject to certain conditions to ensure that the rates are just and reasonable.

## B. Conditions for Approval of TransEnergie's Proposal

### 1. Open Season Issues

TransEnergie will hold an open season for the initial subscription of firm transmission rights, once it receives our approval. The purpose of the open season is to judge the extent of market interest in the project and decide on how to size the facilities.<sup>20</sup> If the capacity on the line is not fully subscribed, TransEnergie will conduct an auction to sell unsubscribed firm transmission rights and TransEnergie will establish a minimum bid

---

<sup>19</sup> Central Hudson, 86 FERC at 61,228-33; PJM Interconnection, L.L.C., et al., 81 FERC ¶ 61,257 at 62,253-61 (1997), reh'g pending.

<sup>20</sup> TransEnergie Petition at 25.

price.<sup>21</sup> Assuming that it finds sufficient market interest, TransEnergie will sell firm transmission rights over the CSC Interconnector. The Commission finds that an open season is the appropriate method for initially allocating firm transmission service on the TransEnergie line.

Neither the filing nor the proposed tariff describe the criteria for conducting an auction or establishing a minimum bid price. Furthermore, TransEnergie does not state when it will hold the open season, how long the open season will be, nor how and when it will advise parties if they will be awarded firm transmission service.

---

<sup>21</sup> Id.

The parameters for conducting both the open season and auction should be transparent, so the bidders as well as the Commission can be certain that it is accomplished in a reasonable manner, and the criteria employed by TransEnergie must be non-discriminatory, fair and transparent.<sup>22</sup> Accordingly, the Commission will require TransEnergie to provide the specific method it proposes to use when conducting its open season and auction by fully addressing the matters we have raised here, 45 days prior to the open season. Also, TransEnergie will be required to report on the results of its open season 30 days after its close. The report should include the identity of the parties that purchase capacity, the amount and term of the reserved capacity as well as the prices established under the auction. The report should also indicate how many parties requested capacity but did not receive it, the amount of capacity requested, the reason that they were not awarded firm transmission, and the reason TransEnergie declined to expand the line to accommodate these requests.

## 2. Secondary Market Issues

A critical component of TransEnergie's proposal is the ability for customers to sell firm transmission rights in the secondary market. The Commission believes that a vibrant secondary market for firm transmission rights on TransEnergie's proposed interconnector will enhance competition in both the New York and New England markets. However, the Commission notes that TransEnergie does not specify how firm transmission rights may be reassigned. In addition, although TransEnergie's proposal provides that customers may use its OASIS to post the availability of firm transmission rights, TransEnergie does not state the mechanics associated with posting on the OASIS. The Commission will therefore require TransEnergie to specify in its compliance filing the procedures for customers to reassign their firm transmission rights. In addition, the Commission notes that TransEnergie must follow the posting requirements set forth in Order No. 889.

## 3. Affiliate Issues

To alleviate concerns about affiliate abuse, TransEnergie proposes to exclude its affiliates from acquiring firm transmission rights. However, the Commission notes that in its application, TransEnergie states that the affiliate restriction applies to the initial sale of firm transmission rights during the open season, not to the purchase of firm transmission

---

<sup>22</sup> See generally Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines, 71 FERC ¶ 61,241 at 61,917 (1995) and Regulation of Short-Term Natural Gas Transportation Services; Regulation of Interstate Natural Gas Transportation Services, FERC Statutes and Regulations ¶ 31,091, Slip op. 114-115 (2000) (Order No. 637).

rights in the secondary market. The Commission finds that TransEnergie's proposal for limiting the potential for affiliate abuse is reasonable.

#### 4. Order No. 2000 Issues

TransEnergie commits to cooperating in the development of RTOs in the Northeast and giving operational control of the interconnector to an RTO that establishes a consistent framework for locational pricing and financial transmission rights.<sup>23</sup> TransEnergie is committed to joining an RTO that adopts such an approach to congestion pricing, *i.e.*, one that well-defines transmission rights and incorporates locational based marginal pricing as currently prevails in the New York and PJM markets.

The Commission will condition approval of TransEnergie's proposal on TransEnergie joining an RTO adjacent to, or containing, the geographic area of its proposed facility, no later than the start of operations of such an RTO. We recognize that it is not yet clear how RTOs will develop in the markets TransEnergie intends to serve. We direct TransEnergie to work with RTOs as they develop in the Northeast to ensure that the RTOs are designed in a manner that accommodates TransEnergie.

The Commission finds that since the RTO should be operational by December 31, 2001, prior to the date by which TransEnergie's facilities will be placed in service (May 2002), the service should be provided under the RTO's tariff. Thus, TransEnergie's request for waiver of the regulations governing tariffs is premature, and will be denied on this basis.

#### 5. Reporting Requirements

TransEnergie commits to cooperate with the Commission's market monitoring mechanisms and operate an OASIS. We will require TransEnergie to comply with all data requests it may receive from any market monitoring entity we have authorized. Furthermore, we will require TransEnergie to comply with Part 37 of the Commission's regulations, including standards of conduct. We will also require that TransEnergie post and maintain on OASIS an up-to-date list of all parties with firm transmission rights and the amount each holds.<sup>24</sup> The Commission believes that complying with ISO market

---

<sup>23</sup> TransEnergie Statement at 4.

<sup>24</sup> California ISO, 89 FERC at 61,437.

monitoring data requests and OASIS reporting requirements is essential for assuring that our long-term competitive goals are reached.

Additionally, TransEnergie agrees to submit the same type of quarterly reports of its transactions as those required for power marketers.<sup>25</sup> The Commission believes that in order to foster competition and prevent potential market power abuse, quarterly reports of TransEnergie's transactions are essential. Furthermore, TransEnergie is directed to inform the Commission of any changes that would reflect a departure from the characteristics that the Commission has relied upon in approving the proposal.

The Commission orders:

(A) The Commission hereby accepts TransEnergie's proposal, subject to the conditions set out in the body of the order.

(B) TransEnergie is hereby directed to file a report, reflecting the items raised in the discussion in the body of the order, within 30 days of the issuance of this order.

(C) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by TransEnergie should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, TransEnergie is hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of TransEnergie, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(E) The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by

---

<sup>25</sup> TransEnergie Petition at 27, 44.

continued Commission approval of TransEnergie's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

(F) Within 30 days of the close of the open season, TransEnergie is hereby directed to file a report, as described in the body of this order.

(G) TransEnergie is hereby directed to provide the specific method it proposes to use when conducting its open season and auction by fully addressing the matters we have raised here, 45 days prior to the open season.

(H) TransEnergie's requests for waivers are denied unless specifically addressed in the body of this order.

By the Commission.

( S E A L )

David P. Boergers,  
Secretary.