

TOWN OF BROOKHAVEN  
INDUSTRIAL DEVELOPMENT AGENCY

MEETING MINUTES

FEBRUARY 29, 2012

MEMBERS PRESENT: Frederick C, Braun, III, Chairman  
Gasper C. Celauro  
Joseph R. Kessel, Jr.  
Ronald J. LaVita  
Peter G. Moloney  
Ann-Marie Scheidt

EXCUSED MEMBER: John Rose

ALSO PRESENT: Lisa M. G. Mulligan, Chief Executive Officer  
James Ryan, Chief Financial Officer  
Yves R. Michel, Deputy Director  
James M. Tullo, Deputy Director  
Annette Eaderesto, IDA Counsel  
William Weir, Nixon Peabody  
Jocelyn Brinka, Administrative Assistant

INVITED GUESTS: John J. Miller, Project Manager, Cross Sound Cable  
Bradley D. Railing, Chief Operating Officer, Cross Sound Cable

Chairman Braun called the meeting to order at 12:34 P.M. on Wednesday, February 29, 2012 at Danford's Hotel and Marina, 25 East Broadway, Port Jefferson, New York.

Mr. Braun invited Mr. Weir to discuss the Cross Sound Cable project. Mr. Weir explained that this 330 megawatt cable runs under Long Island Sound from Connecticut to Shoreham. The part that is in New York State has an easement across the bed of the Long Island Sound at the New York / Connecticut border, and then an easement across the Sound to the Converter Station at the former Nuclear Power Plant in Shoreham. As the power comes through power lines on land it is a direct current, is converted to an AC current and sent to the Long Island Power Authority (LIPA) power grid. Mr. Weir noted there is a power purchase agreement with LIPA.

This project is complete but there is a tax certiorari pending with the Town Assessor's Office. One way to settle this is to put this project into a Payment-in-Lieu-of-Tax (PILOT) Agreement. Mr. LaVita inquired if there are taxes on the actual easement; Mr. Ryan replied that they pay tax on the cable and an additional tax on the converter station itself. Cross Sound leases the land

above the water line from LIPA and under the seabed from the State. Mr. Ryan asked if this potential agreement would embody that which is below mean high water to the Connecticut state line because that is special franchise and that assessment is performed by the State of New York. Mr. Weir responded that the project did specify the cable from the state line to the converter stations. Mr. Ryan doesn't think NYS will relinquish their right to assess that part of the cable. Above mean high water to the converter station is locally assessed. An opinion from the Comptroller will be requested.

Mr. Weir questioned who collects the taxes for an under the seabed cable; is it the State, County or Town? Mr. Ryan responded that they don't pay taxes to the State and the State has the power to assess special franchise property which is anything in a public right-of-way that is longer than 50 feet. He added that he thinks the Shoreham-Wading River School District extended their boundary to the Connecticut state line. Mr. Weir stated that even if it is assessed by the State, it is his understanding that if the IDA takes an interest in it, they can still exempt it from those taxes. Mr. Weir will find out if special permission is needed from New York State to allow it to come into the IDA.

Mr. LaVita inquired who currently owns the land under the Sound; Mr. Weir replied that it is owned by New York State. There are easements from LIPA to get them from the high water mark to the converter station and they have a lease with LIPA for the roughly 3.2 acres of land where the converter station is located. Cross Sound pays their allocation of the tax bill based on the improvements they made back in 2004. Mr. Miller showed the members a graph showing how taxes spiked between 2009 and 2010. Mr. Ryan pointed out that the spike in taxes was not caused by changes in the assessment, but by changes in the tax rate. Mr. Miller said in the case of the cable, it was due to the assessment. Mr. Ryan confirmed this was due to a functional obsolescence charge that was granted to Cross Sound when they first laid the cable and that this charge probably came off in 2004. After the cable had been laid, it had to stay dark for a set period of time. The tax spike was a result of removing the functional charge. Mr. Ryan said when the cable was initially assessed there was disagreement on how much to charge since the cable wasn't yet operating. In 2010 the bump in the assessment came from the State of New York. There was a 50% increase in one year for the cable. This matter was challenged and settled in court. Mr. Railing explained that the problem with cable assessments is that they use the Handy-Whitman Index. Mr. Ryan stated that the State of New York handles all grievances for special franchises and all cases are settled so he doesn't feel you can argue that you are over

assessed when you have agreed to the settlement. Mr. Railing said that if this trend continues on Long Island many businesses will not be able to stay open. What Cross Sound would like is certainty in what they will be paying from now on. They also want to insure that they don't violate their lending agreements because of their debt service cover ratio going down. Mr. Railing added that any deal between the IDA and Cross Sound Cable will not include any pass-through of property tax to LIPA. The rate they negotiated with LIPA in 2000 did not include or consider the tax on the cable in the water. There was legislation passed after the fact that extended the boundary to the New York border which captured the cable. Had they known this while negotiating the capacity rate they would have requested a higher fee.

Mr. Celauro asked what percentage of energy this cable provides Suffolk. Mr. Railing replied that Cross Sound provides transmission capacity service so they have no part of the transactions of energy, this is handled by LIPA. Cross Sound's job is to keep the 330 megawatt capacity at a high availability rate for LIPA and he noted that when the cable is not operating they do not get paid. The cable is utilized between 75% to 80% a year. For a frame of reference, Mr. Weir reminded the Board that the Caithness Power Plant is 350 megawatts so this is roughly the same capacity. Mr. Railing detailed their operations which include voltage control stabilization on the Island and reactive power support. Mr. Kessel inquired why LIPA isn't negotiating on Cross Sound's behalf. Mr. Railing responded that the tax issue is theirs alone as there is no pass-through provision. LIPA is aware of Cross Sound's discussions with the IDA and would need to consent to any leaseback since they hold the ground lease. Mr. Ryan asked what the remaining term is on their purchase power; Mr. Railing said it is until June 2032 but the ground lease runs a bit longer. If or when the lease ends, they will have to remove everything including the cable. There was a Request for Proposals (RFP) for this project in 1998, the contract was awarded in 2000 and is the only operating merchant transmission facility. Cross Sound has all the operating risk. There is another cable that runs from New Jersey to Hempstead. Mr. Weir noted that the other cable is under a PILOT Agreement as well with the New York City and Nassau IDAs.

Mr. Weir explained to the Board that the inducement resolution being proposed today is designed to move forward with the leases but specifically does not authorize a PILOT Agreement. A public hearing is required and the PILOT will still need to be negotiated. The lease documents state that the PILOT has to be negotiated by May 30<sup>th</sup> or the leases will be terminated. Any PILOT agreed upon will not be in effect until next year as taxable status date is March 1<sup>st</sup>, and no closing will take place on the leases until the PILOT Agreement has been

finalized. The converter station is 22,000 square feet. The cables are specifically for 330 megawatts, are 4 ½ inches in diameter and are buried 6 to 11 feet below the seabed depending on the area.

The motion to approve the inducement resolution was made by Mr. Celauro, seconded by Mr. Moloney and approved with Mr. Kessel opposed.

Mr. Braun inquired about Cross Sound's operation in Massachusetts. Mr. Railing explained that Cross Sound is owned by a Canadian company called Brookfield who deals with hydroelectric and solar wind. They own roughly 35 hydroelectric plants spread across New York and other parts of New England. They were owned by Trans Energy US when the project was initially built. The power generally flows from Connecticut to Long Island but can be reversed in an emergency. They only provide service from New Haven, CT to Shoreham, NY. The gentlemen reiterated they only provide the transmission of power; they are not part of energy transactions. The cables have been in place since May of 2002. More information about Cross Sound Cable is available at <http://www.crosssoundcable.com>.

As there was no other business before the Board, the motion to adjourn the meeting at 1:41 P.M. was made by Ms. Scheidt and seconded by Mr. Moloney. All were in favor.

*The next meeting of the IDA is scheduled for March 21, 2012.*