Chronicle of a Transmission Line Siting

Cross-Sound Cable Co. shows how transmission siting is much harder to do now than in the good old days.

By Linda L. Randell and Bruce L. McDermott

Opposition to electric transmission line projects designed to upgrade the nation's infrastructure can come from a number of sources: the host municipality, adjacent municipalities, the state's executive branch, the legislative branch, commercial entities, ad hoc or long-standing environmental groups, and/or organized citizen groups. The issues raised can require expertise in an array of thorny legal and factual issues not traditionally encountered in straightforward siting proceedings of the past. Siting a transmission line project today can require strategic analysis and the assembly of a multi-disciplinary team of lawyers and consultants to help safely guide the project around and over the challenges that may be encountered.

The efforts of Cross-Sound Cable Co. LLC to site and construct a 330-megawatt electric transmission line buried under the seabed of Long Island Sound from New Haven, Conn., to Long Island, N.Y., illustrate the new siting reality. The Cross-Sound project and legal team were required to address issues well beyond the regulatory/siting matters that used to be the norm in siting a transmission line, requiring expertise in aquaculture, jetting, computer modeling of sedimentation and tides, municipal rights, land use under the water, state's rights and federal constitutional issues.

Along the way, the project would pit Connecticut's governor against the state's attorney general and legislature, both of which tried to bring a halt to the project.

Cross-Sound Cable uses the SeaSpider II to lay down cable under the sea bed. The Smart Jet 1150 (opposite page, and, in concept, on p.36) assists.

'Straightforward Process' Hits Turbulence

In the 1980s and early 1990s, utilities expanded the electric grid substantially to meet load growth and enable the transport of electricity over long distances. Siting and constructing electric transmission lines was a straightforward process for the utility, entailing engineering and preparation of the application to the siting agency. The process was generally linear, direct, and relatively time-efficient and cost-efficient. The utility would:

(1) determine the need for the transmission line;

(2) investigate alternative routes, based upon proximity to existing bulk infrastructure and expected load growth;

(3) determine the least costly route, taking into account technical feasibility and environmental considerations;

(4) design the project to minimize environmental impacts;

(5) consult with the municipality(ies) in which the line would be located;

(6) design the project; and

(7) apply for siting approval and, as necessary, state approval of construction methods.

Today, siting and constructing an electric transmission line has become a multi-disciplinary municipal, regulatory and litigation process with a maze of twists and turns. The process can be circuitous, repetitive, time-consuming and costly. In addition to the basic steps outlined above, a transmission line project's personnel today can find that they are required to:

(a) attend municipal hearings;

(b) respond to allegations made at municipal hearings;

(c) respond to media inquiries about the allegations;

(d) meet with known opponents;

(e) participate in a contested siting proceeding, putting on a complete direct case, cross-examining opponents' witnesses on environmental and commercial issues, and presenting a rebuttal case;

(f) oppose opponents' motions during the siting proceeding and oppose motions for reconsideration after siting approval is granted;

(g) defend against opponents' court action seeking a stay of siting approval;

(h) seek court relief from municipal stop-work orders;

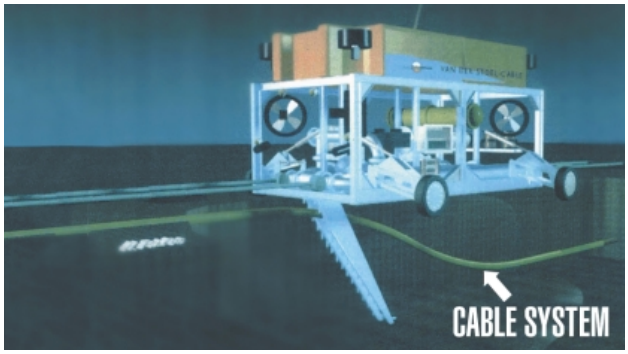
(i) address opponents' claims of environmental impacts after the approval;

(j) address legislative attempts to stop the project, either during the siting process or even after the approvals are received; and

(k) defend against opponents' appeals of the approval decision through the state court system.

Starting on the Road to Siting Approval

On July 24, 2001, Cross-Sound applied to the Connecticut Siting Council for a Certificate of Environmental Compatibility and Public Need to construct, operate and maintain the cable project. Cross-Sound had substantially redesigned the cable project to address environmental concerns expressed by the siting



council with respect to an earlier project that, in the siting council's determination, would have had too significant an impact on shellfish resources in New Haven Harbor. In response to the siting council's concerns, Cross-Sound designed the cable project to avoid all but 700 feet of actively cultivated shellfish beds. It did so by routing the cable through the Federal Navigation Channel in New Haven Harbor, and by providing for installation of the cable from landfall to the channel using directional drilling.

Cross-Sound applied for approval to install the cable through a variety of environments requiring condition-specific installation methods. Each installation method was selected for its speed, accuracy and minimal environmental impact. Within the Long Island Sound and in the channel, the chosen method involved laying the cable on the seafloor, followed by a self-propelled remotely operated vehicle (ROV) that locates and follows the cable on the sea floor for its linear embedment process. The ROV's jet knives use water pressure to hydraulically penetrate bottom sediments to the desired installation depth. Once the ROV incises the seabed and moves forward, the submarine cable settles into the bottom of the jetted section.

Cross-Sound's application to the Connecticut siting council was opposed by the city of New Haven, state Attorney General Richard Blumenthal and numerous state legislators.

The siting council held five days of public hearings at which the city of New Haven and Blumenthal not only cross-examined Cross-Sound's project personnel and independent experts but also presented their own witnesses. Cross-Sound presented experts on electric system operation and reliability, alternative route analysis, the Eastern oyster and shellfish resources, electric and magnetic fields, impact of installation and more usual environmental issues associated with siting (aesthetics, historical areas, animal and wildlife disturbance, natural resource damage, and thermal and water resource impacts). Finally, on Jan. 3, 2002, the siting council granted a certificate to Cross-Sound. The siting council determined the cable project would provide a public benefit and would not have any environmental impact that would provide "sufficient reason to deny the application." The council noted the increased importance of regional cooperation with respect to infrastructure.

Most transmission siting stories would end right there, but Cross-Sound's legal challenge to site and then operate its transmission line had only begun.

Navigating the Post-Approval Challenge: Green Lights Go to Red

After the siting council approved the project in January, that decision was challenged over a period of eight months by the state legislature, the city of New Haven, Connecticut's attorney general, and several shellfish companies, but each challenge was either withdrawn (in the case of the shellfish companies), or dismissed by a higher court or other legal authority. During this time Cross-Sound installed its transmission cable. The company now is in the process of meeting the depth requirements for the cable.

What happened last summer could be seen as a validation of Cross-Sound's position. Faced with an imminent emergency for power during an August heat wave, the Long Island Power Authority (LIPA) requested that the U.S. Department of Energy issue an order requiring Cross-Sound to transmit electricity to Long Island. In its request to the DOE, LIPA asked that the order require Cross-Sound to operate the cable in August and September and accept schedules for transmission from LIPA on a day-ahead basis when LIPA forecasted that its generation reserve margin would be less than 600 megawatts in excess of anticipated load. The DOE issued the Emergency Order on Aug. 12, 2002, pursuant to 16 U.S.C. § 824a(c).

Failure to comply with the emergency order would have subjected Cross-Sound to both criminal and civil penalties under federal law, which provides for the imposition of penalties (up to $7,750 per day, combined) for "each day that a violation of the provisions of this subpart or any order issued pursuant thereto continues" 10 C.F.R. § 207.7. In addition, 10 C.F.R. § 207.8 vests the federal district courts with jurisdiction to hear injunction petitions filed by the United States attorney general at the DOE's request for the violation of any provision or order.

No entity sought to appeal the DOE emergency order, although the Connecticut attorney general publicly opposed operation of the cable until it was installed to the authorized depth along 100 percent of the route.

A break in the heat wave eliminated LIPA's potential emergency, and the cable was never called upon during the term of the order. As of mid-November, the cable was safely installed but not yet operational pending meeting the authorized burial depth. F

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