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# REGIONAL ENERGY RELIABILITY AND SECURITY: DOE AUTHORITY TO ENERGIZE THE CROSS SOUND CABLE

## HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND AIR QUALITY

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

MAY 19, 2004

**Serial No. 108–83**

Printed for the use of the Committee on Energy and Commerce

Available via the World Wide Web: http://www.access.gpo.gov/congress/house

U.S. GOVERNMENT PRINTING OFFICE

93–979PDF WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
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# REGIONAL ENERGY RELIABILITY AND SECURITY: DOE AUTHORITY TO ENERGIZE THE CROSS SOUND CABLE

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**WEDNESDAY, MAY 19, 2004**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON ENERGY AND AIR QUALITY,
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10 a.m., in room 2322, Rayburn House Office Building, Hon. Ralph Hall (chairman) presiding.

Members present: Representatives Hall, Cox, Shimkus, Pickering, Radanovich, Rogers, Issa, Otter, Barton (ex officio), Boucher, Waxman, Green, and McCarthy.

Staff present: Jason Bentley, majority counsel; Mark Menezes, majority counsel; Bob Rainey, fellow; Peter Kielty, legislative clerk; Sue Sheridan, minority counsel; Bruce Harris, minority professional staff member.

Also present: Representatives Bishop of New York and Israel.

Mr. HALL. It appears that the main ones are present, so we will get underway.

Today's hearing is going to provide us with a very good example of our Nation's energy problems, and I think we need to pass the Comprehensive Energy Bill. It is about a dispute between two States with implications for regional reliability. The Cross Sound Cable is the first of its kind, merchant transmission project and approved by the Environmental and Siting Agencies of New York and Connecticut. It is approved by the U.S. Army Corps of Engineers. The Public Utility Commissions of both States found that the project would benefit the consumers in their State.

When the project was unable to comply with its permits, the owners immediately contacted the appropriate agencies. While most of the agencies were willing to work and work together and try to work out the differences, Connecticut's response—and they made their decision to shut the project down. Not only did they shut it down completely, the State legislature imposed a moratorium preventing State agencies from issuing or modifying any new permits for energy projects in that area. They recently reissued the moratorium and apparently intend to keep doing so indefinitely.

The result is that the Cross Sound Cable investors can't negotiate with the State to address their problems, and they can't get permits to do what's needed to comply with the original permit. They are really left with no recourse.

So today, we will hear testimony on the benefits of the Cross Sound Cable and how it has been used over the past 6 months.

Following the blackout last August 14, Secretary of Energy used his emergency powers to order the cable put into operation. Testimony today will address how the cable was used to stabilize the grid in the northeast and how it can help relieve transmission congestion in New York and the New England RTO.

When it is all said and done, I think we will see, once and for all, that the Cross Sound Cable will save money for consumers in both New York and Connecticut by improving reliability and reducing the delivered cost of electricity. Because of these benefits, we included a provision in the Comprehensive Energy Bill that now awaits two votes. We need two senatorial votes, just two.

We could get them both from New York, perhaps, if we included a provision in the Comprehensive Energy Bill that resolves this dispute in favor of keeping the Cross Sound Cable in operation. It is my strong desire that the appropriate parties in Connecticut and New York—two great States—can come together to reach some kind of agreement.

I fear however that Connecticut's just-say-no attitude to regional energy security and reliability is going to require an act of Congress to resolve. And that is kind of a shame, because we ought to get a business decision rather than a congressional decision.

The reliability assessment for this summer indicates that the northeast should have sufficient generation capacity to meet the region's needs. However, the demand of growth will require significant new investment in the years to come, and the reality of transmission congestion may have significant effects on reliability and the cost of power this summer.

Long Island is one of those congestion points identified, and the assessments were done under the assumption that the Cross Sound Cable would be operational. Since it is no longer in service, we can expect that supplies will be tighter than predicted this summer and congestion worse for the northeast.

I hope this hearing today between two great States, two great areas, well-represented, will help kickstart the dialog between these two States to resolve their differences and realize that they both need all the power they can get.

With that said, I look forward to hearing the testimony of our witnesses, great witnesses, and get a better understanding of just what some of Connecticut and New York's concerns are.

We have Steve Israel and Tim Bishop, not members of this committee. We ask that they sit in and be given the rights of questioning the witnesses as other members of the committee.

Is there objection?

The Chair hears none. They are accepted.

Without objection, the Chair is going to proceed pursuant to Committee Rule 4(e) and recognize members for 3 minutes for openings statements. If they differ, this time will be added to their opening round of questions.

At this time, recognize the gentleman from Virginia.

Mr. BOUCHER. Well, thank you very much, Mr. Chairman. And thank you for convening today's hearing. We will have an oppor-

tunity this morning to evaluate the role of the Cross Sound Cable in addressing the electricity needs of New York and Connecticut.

The cable is a 330-megawatt undersea merchant transmission line connecting the regional transmission system in Connecticut with the New York Independent System Operator on Long Island. The line was buried beneath the Long Island Sound in 2002, although it was not activated at that time. Opponents of the cable, largely from Connecticut, raise environmental concerns such as the question of whether the line is buried deeply enough at certain points as it crosses Long Island Sound. Officials from Connecticut have additional objections stemming from concerns that the line would encourage power flows out of Connecticut, which itself is suffering from electricity transmission constraints.

Supporters of the cable believe that its use would bolster transmission system reliability both in Connecticut and in New York and also help to meet a projected power shortage on Long Island during the course of this summer.

Following the blackout last August, Secretary Abraham issued an emergency order activating the line to relieve electricity shortages on Long Island. Two weeks ago, on May 7, secretary Abraham declared an end to the emergency conditions that necessitated the lines use and accordingly rescinded the emergency order.

At that time, the Secretary pointed to conclusions reached in the joint task force report on the blackout that operation of the Cross Sound Cable would not have prevented the spread of the blackout. The conference report on H.R. 6, the Comprehensive Energy Bill contains a provision that would have blocked the Department of Energy from terminating the order energizing the cable. That provision directed that the order remain in effect unless specifically rescinded by an act of Congress.

Since the recission of the order, Senator Clinton and Representatives Tim Bishop and Steve Israel have introduced in the Senate and in the House legislation virtually identical to the provisions in H.R. 6 relating to the Cross Sound Cable. The bills introduced by the New York delegation would reverse the recission and keep the cable in operation under the emergency order unless Congress acts to reverse the order.

We have with us sitting on our panel today Representatives Bishop and Israel, and I also want to extend a welcome to them.

Today's hearing will give us an opportunity to learn about the power generation and transmission needs of New York, Connecticut and the New England region and the role that the Cross Sound Cable plays in addressing those needs.

We also welcome the testimony from our distinguished colleagues, former Member of the House and Member of the Senate, Senator Schumer, and representatives in Congress from both New York and Connecticut.

We also welcome testimony this morning from the chairman of the FERC, general counsel of the Department of Energy, the New York Independent System Operator, the Attorney General of the State of Connecticut and both the merchant company which operates the cable and the Long Island power authority. Mr. Chairman, it is a timely hearing, and I commend you for convening it, and I yield back.

Mr. HALL. I thank you. And if there is no objection, Senator Schumer has other things that he has to do, and we will delay the opening statements, if you don't mind, until we hear from Senator Schumer.

And I am sure he is going back over there and going to work on trying to pass that energy bill to where we won't even need this.

Mr. ISSA. Mr. Chairman, is that a commitment?

Senator SCHUMER. All we need is two little changes, and we will be with you all the way.

Mr. HALL. He is a highly respected former Member of the House and a great worker over in the Senate.

Senator Schumer, we are pleased to recognize you. Thank you.

**STATEMENT OF HON. CHARLES E. SCHUMER, A UNITED STATES SENATOR FROM THE STATE OF NEW YORK**

Senator SCHUMER. Well, thank you Mr. Chairman. I want to thank your courtesy in inviting me to speak at this hearing and remember the days we were both Members of the class of 1980 that came here in the Congress.

Mr. HALL. You have done well, and I have gone wrong.

Senator SCHUMER. You have done pretty good, too. You are a chairman, I am not.

Anyway, thank you and I want to thank my friend, Rick Boucher, the ranking member of the committee also. We served much time together on the Judiciary Committee.

And my other colleagues here, some of whom I see in the gym early in the morning. I still go to the House gym, Mr. Chairman, right in this building.

Ms. DELAURO. Where they still don't allow women.

Senator SCHUMER. No, they allow women.

Mr. SHAYS. Mr. Chairman, is this Senate time or House time?

Mr. HALL. Don't you have to hurry?

Senator SCHUMER. Chris is right. Ralph, Chris is right.

When I got to the Senate, and they said, "How much time do you need to speak on the floor," and I think, having been in the House for 18 years, I said, "Well, 5 minutes," which would be a generous amount of time in the House, they said no one speaks on anything for less than 20 minutes on the Senate floor. So pardon me. Anyway, let me get to my testimony.

The bottom line, Mr. Chairman, is that I strongly want to voice my support for reactivation of the Cross Sound Cable. And in fact, I hope we don't have to go the legislative route, which you know can be The Perils of Pauline.

Today, we are urging the Department of Energy to step up to the plate, do the right thing, and reactivate the cable, plain and simple. The operation of the Cross Sound Cable is critical to insuring reliability and reducing electric rates throughout the northeast.

A failure to reach a solution that will allow the cable to operate will not only hurt both sides of Long Island Sound, but will set a dangerous precedent and threaten electric reliability from one end of the country to the other by undermining even responsible efforts to construct new transmission infrastructure.

I join my colleagues—I am glad that Pete King is here. Our colleagues on Long Island, Tim Bishop and Steve Israel are here. And we are united in our voice in this regard.

And I have great respect for both my colleagues from Connecticut, but we are going to have to agree to disagree on this issue.

Now, let me just make a few points here. One, this cable made a lot of sense before the August 14 blackout, but it makes just about complete sense now. And that is why the Department of Energy reactivated—activated the cable, because there was an emergency. God forbid, we have some hot days and there are brownouts on Long Island, it will be too late for the Department of Energy to declare an emergency ex post facto. We need them, again, to step up to the plate right now.

Let me make a few of the arguments. We all know—and you have laid it out very well Mr. Chairman—the need for interconnectivity. This cable will benefit citizens on both sides of Long Island Sound. When there are shortages of electricity which occur in ways that we don't even know, as the blackout showed, to have this insurance of this cable which can send power from one part of the power grid to the other, that are not directly connected, makes imminent sense.

The Department of Energy never should have rescinded their ruling that this cable was needed. As a result of the Department of Energy's decision, the Cross Sound Cable is powering political controversy when it should be powering homes. Unfortunately, this is nothing new about the project.

Since it was first proposed, it has encountered political objections that have, at each step of the way, threatened to prevent the cable from coming to fruition. The current status is the latest and most frustrating example. As a condition of the permit issued for the cable, by the Connecticut Department of Environmental Protection, the cable must meet a depth requirement of 48 feet below the water's surface and 6 feet below the seabed. The cable satisfies this requirement in all but seven places which, taken together, comprise 700 feet of the 24-mile cable's length. And they miss the requirement only by 6 feet.

To dispel any notion that this has environmental problems, both the Army Corps of Engineers and DEP acknowledged that operating the cable at its current depth would present no environmental threat. And yet the Connecticut DEP still did not allow the cable to operate and, as you mentioned, legislatively passed a moratorium.

So Connecticut's been successful in stopping the operation of a cable by blocking attempts to solve an environmental problem it acknowledges doesn't exist.

But those regulatory gymnastics aren't going to cut it as an explanation if the lights go out. That is why the Department of Energy needs to step up to the plate and do what every objective observer knows is the right thing to do and reactivate the cable to provide reliability this summer.

One other point, just recently, Connecticut got permission to take sludge from New Haven Harbor, the very area we are talking about, and put it in the Long Island Sound. No one disputes that

the sludge has more environmental problems to the Long Island Sound than the cable. And yet from the Connecticut State officials, particularly the gentleman leading the charge, we don't hear a thing.

If the goal was the environmental viability of the Long Island Sound, you would certainly have a larger outcry against the sludge dumping than against the cable. So something is not right here. Any school child, whether they are in Northport or New Haven, would be able to tell you that toxic sludge is more of an environmental threat than an underground electric cable. It seems that Connecticut opposition to the Cross Sound Cable is not out of environmental concern but rather out of environmental convenience.

The bottom line, Mr. Chairman, the operation of the Cross Sound Cable is crucial to the power and economic security needs of Long Island. And that is why I have been an ardent supporter. I know it is said—I read the Attorney General's testimony. He said Long Island has done nothing to increase its own power needs. Long Island built—LIPA, the energy utility there, built 15 power plants that include 600 new megawatts for Long Island. I stood with the environmental groups. I had to sort of drag some of them there to support another thousand megawatt plant in Melville, which will be on the road to construction. But as you know, the cable is insurance. It is a safety valve when, in our disconnected northeast power grid, one side of the sound or the other side has trouble.

Now, in conclusion, Mr. Chairman, we have no problem being a good neighbor to Connecticut. Senator—Congressman Shays reminded me that our last dispute was over Gardners Island in 1700 or something like that. In fact——

Mr. HALL. I remember that.

Senator SCHUMER. You remember that. Class of 1980. That was 1780. Let me just say, Mr. Chairman, in fact, most of the natural gas that is used in Connecticut at one point or another goes through New York Harbor.

We are interconnected. We need one another. We work much better when we work together. I am hopeful that either Connecticut will find some kind of compromise—and I know that Senator Dodd has stated publicly that he would try to seek a compromise, and I welcome that effort—or the Department of Energy step up to the plate and do the right thing. They don't have much time to wait. By Memorial Day, the heating season comes. And that is when we start our problems. So we hope they will step up to the plate and do what we have to do and avoid the need to go through the legislative path.

With that, Mr. Chairman, I would ask unanimous consent my entire statement be put in the record.

[The prepared statement of Hon. Charles Schumer follows:]

PREPARED STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

I would like to thank Chairman Hall, Ranking Member Boucher, and the rest of the members of the Subcommittee for allowing me to voice my support for the reactivation of the Cross Sound Cable. The operation of the Cross Sound Cable is critical to ensuring reliability and reducing electric rates throughout the Northeast.

A failure to reach a solution that will allow the cable to operate will set a dangerous precedent and threaten electric reliability by undermining even environmentally responsible efforts to construct new transmission infrastructure.

Like my colleague on this panel, Rep. King, as well as my fellow New Yorkers Rep. Bishop and Rep. Israel, I have been a strong advocate for the cable and believe that it represents a creative, environmentally responsible solution for meeting power needs on Long Island as well as Connecticut. In the wake of the August 14th blackout I believe even more strongly that the Cross Sound Cable provides a vital capability to prevent future blackouts by quickly transmitting up to 330 MW of electricity, or enough power to serve 330,000 homes.

The Department of Energy's decision to shut down the cable and take this capacity off of the table as we head into the hot summer months is shortsighted and dangerously heightens the risk that we will see a repeat of last summer's blackout. As a result of the Department of Energy's decision, the Cross Sound Cable is powering political controversy when it should be powering homes.

Unfortunately this is nothing new for the project. Since it was first proposed, it has encountered political objections that have at each step threatened to prevent the benefits of the cable from coming to fruition. The cable's current status is the latest and most frustrating example.

As a condition of the permit issued for the Cross Sound Cable by the Connecticut Department of Environmental Protection, the cable must meet a depth requirement of 48 feet below the water's surface and six feet below the seabed. The cable satisfies this requirement in all but seven places which taken together comprise approximately 700 feet of the cable's 24-mile length, and only miss the requirements by six feet.

Despite the fact that the Army Corps of Engineers and the DEP itself have acknowledged that operating the cable at its current depth would present no environmental threat, the DEP will still not allow the cable to operate. Connecticut has also enacted a moratorium that prevents the supposed shortfalls from being rectified.

Connecticut's been successful in stopping the operation of the cable by blocking attempts to solve an environmental problem it acknowledges doesn't exist, but those regulatory gymnastics aren't going to cut it as an explanation if the lights go out. That's why the Department of Energy needs to step up and do what every objective observer knows is the right thing to do and reactivate the cable to provide reliability this summer. In the newly deregulated markets of the Northeast everyone will suffer if the grid is not upgraded and more strongly connected by projects like the Cross Sound Cable.

It's not matter of theory that the operation of the Cross Sound Cable would have no detrimental environmental impacts, it's been clearly demonstrated. As a result of Secretary Abraham's emergency order following the August 14th blackout we have had a chance to see through actual operations that the cable is not an environmental threat and plays a critical role in ensuring electric reliability throughout the Northeast.

I also find the claims of environmental concern issued by those in Connecticut, not necessarily include my colleagues here, who oppose of the cable to be inconsistent with their stance on other issues. Some have advocated the dumping of toxic sludge into the Long Island Sound as part of a project that would deepen Connecticut's harbor, creating an economic benefit. Any schoolchild in Northport or New Haven would be able to tell you that toxic sludge is more of an environmental threat than an underground electric cable. It seems that Connecticut opposition to the Cross Sound Cable is not out of environmental concern but environmental convenience.

The operation of the Cross Sound Cable is crucial to the power and economic security needs of Long Island, which is why I have been such an ardent supporter of the project. However, I also believe that Connecticut and New York have a responsibility to be good neighbors to each other, and the Cross Sound Cable would allow that.

If allowed to operate, the Cross Sound Cable will increase the availability of imported power to Connecticut both directly and by helping to loop power through the already operating Norwalk cable.

In fact, during its operation, the cable was available on 108 instances to provide voltage support to Connecticut, bolstering reliability. It was in fact the absence of this type of support that exacerbated the August 14th blackout.

The Cable also transmitted power directly to Connecticut, automatically responded to a number of unanticipated system disturbances, and could help displace generation from old, air polluting power plants. In the short time that the cable has been allowed to operate, it has proven to be a benefit not just to Long Island, but also to the region as a whole.

New York has no problem being a good neighbor to Connecticut. In fact, almost all of the natural gas used in Connecticut at one point or another is transported through New York. However it seems like the neighbor we have tried to be so good

to has just put up a regulatory fence and is threatening to turn out our lights this summer.

The continuing objections and obstacles to the operation of the Cross Sound Cable are creating a public policy failure in the making by placing irrational regulatory obstruction over the needs of families and businesses in the Northeast. In order to rise above this regulatory game of "Gotcha" and prevent blackouts this summer, the Department of Energy needs to show some leadership and reactivate the cable.

It's even more clear after the events of last summer that the Department has a responsibility to ensure that blackouts don't again affect millions of Americans. If the Department does not activate the cable and blackouts result the cause would be nothing short of negligence.

By paving the way for the reactivation of the Cross Sound Cable, Congress and the Administration have the opportunity to send the message that needed improvements in transmission can be made, and that the federal government has indeed made a serious commitment to preserving reliability. I urge the Subcommittee to send that message before it is too late.

Mr. HALL. Without objection, and if you would continue to bless us with your presence——

Senator SCHUMER. I am going to stay Mr. Chairman.

Mr. HALL. Until the chairman of the big committee speaks, in order that the chairman of the little committee can keep his chairmanship.

I would ask you if you would—Joe Barton. We are going to recognize Mr. Barton at this time for as much time as he needs to consume.

Chairman BARTON. I won't take that Mr. Chairman. I would ask that my formal statement be included in the record.

[The prepared statement of Hon. Joe Barton follows:]

PREPARED STATEMENT OF HON. JOE BARTON, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Today's hearing presents a number of interesting issues. Some of these issues are addressed in the Conference Report for H.R. 6, the comprehensive energy bill, which was passed by the House and is awaiting action in the Senate. Other issues raised by today's hearing will require renewed discussions between officials in Connecticut and New York in order to be resolved. I hope that by the end of today's hearing we have an agreement from the witnesses here today to work on resolving both sets of issues.

The issues raised by today's hearing that would be resolved in the comprehensive energy bill are as follows:

- As to the question of whether the Cross Sound Cable should remain in operation, the comprehensive energy bill keeps the cable energized unless Congress decides it should be turned off.
- As to the question of whether a State can delay a decision on a natural gas pipeline indefinitely, the comprehensive energy bill requires States to make a decision one way or another, and removes the appeal of that decision to Federal court. This, and other provisions in the comprehensive energy bill, will help get projects, like the Islander East natural gas pipeline, constructed.

These provisions in the comprehensive energy bill will help the citizens of New York by increasing energy security and reliability, reducing the price consumers pay for electricity, and providing more, and more affordable, clean-burning natural gas to heat their homes and generate electricity.

These provisions will also help the citizens of Connecticut, by reducing transmission congestion costs in their State and, in the words of the Connecticut Siting Council, "enhance[ing] the inter-regional electric transmission infrastructure and improve[ing] the reliability and efficiencies of the electric system here in Connecticut as well as in New York." If Connecticut is concerned that New York is not doing enough to generate their own power, then help them construct a gas pipeline to fuel their own power plants.

Other issues that may arise today will need to be worked out between officials in New York and Connecticut. As to who should pay to upgrade the existing transmission cables between Connecticut and New York, that issue needs to be worked out between those States and the FERC. On the question of whether New York is

doing enough to build it's own generation, I need to point out that there is an 1100 megawatt power plant waiting to be approved that would supply much needed future power to Long Island and New York City. To be fair, though, if folks in Connecticut think New York should supply all of its own power needs, I would only point out that Connecticut imports more than 15% of its total annual electricity consumption from other States.

My point is that these are regional energy problems that require regional energy solutions. Just like the examples of the Cross Sound Cable situation and our inability to finish construction of the Islander East gas pipeline, the comprehensive energy bill pending before the Senate provides us with real solutions to our Nation's energy problems.

We are two votes short of the sixty needed to defeat the filibuster in the Senate. Fifty-eight Senators have voted in support of passing an energy bill this year. Senator Schumer, who is testifying here today, is leading the effort in the Senate to stop the energy bill. Two votes are all we need Senator. I know there are things in the bill that you may not like. There are things in there I would do differently. But every provision in the bill is important to some region of the country and some State. And together, they represent a balanced package, with the broadest bipartisan support we will likely get this year. I know you agree with me that the American people deserve a comprehensive energy policy. Given your interest in resolving this Cross Sound Cable dispute, I hope we can count on your vote in the Senate.

With that said, I hope this hearing today does two things:

(1) I hope officials in New York and Connecticut can start working again to resolve their differences; and

(2) I hope it helps us all to better understand the need to pass a comprehensive energy bill this Congress.

I look forward to hearing from our witnesses.

Mr. HALL. Without objection.

Chairman BARTON. I know that Senator Schumer has to leave, so I want to make a few comments. I do appreciate this panel. It is good to see our friends in the House from New York and Connecticut and, of course, our good friend from the Senate, Senator Schumer, who is a former Member of this body.

My main point is more directed to you, Senator, since we don't get to see you all the time over here. We have a comprehensive energy bill that is been languishing in the Senate for I guess about 6 months now. The issues that are before us today are addressed in that bill.

We have a siting protocol, so that when States disagree, we let the FERC and the Federal courts intervene in an expeditious fashion. On the particular project in mind, the conference report would allow that cable to continue to be energized unless the Congress decided it should not be.

And I am not saying the Congress should intervene between States. It looks like Connecticut and New York are trying to work this out slowly but surely, and I think, over time, you will.

But my request to you Senator Schumer, would be to try to find a way in your heart, talk to your other Senator from New York. We just moved a bill through the subcommittee and full committee on the New York watershed. That is, I think, a bill that you and Senator Clinton moved over there. So we are not anti-New York, nor are we anti-Connecticut. I don't want my Connecticut friends to think that. But I would really like to see if we couldn't get that energy bill up for a vote. We only need two more votes for cloture. And you and Senator Clinton could be those two votes.

If there is an issue that is just so sensitized that we need to work it out as a sidebar, I am sure the Speaker and the Majority Leader and myself and Mr. Dingell and others would be happy to work on that.

So you know, my request to you is, we have got gasoline prices at all time highs. We have got natural gas prices at all times highs. We have got coal prices at all time highs. Surely think there ought to be a way to get two more senators to let the energy bill come up for a vote in the Senate.

Senator SCHUMER. Okay.

Well, Mr. Chairman, if I might respond. And first, I very much appreciate your coming and making the time, Mr. Chairman.

The bottom line is a simple one. As you know, the bill was blocked in the Senate by a bipartisan coalition. In fact, every Republican from the northeast, from New England and the northeast, opposed the bill. And that is because the bill may be very good for some regions of the country, but it does real damage to those of us in the northeast.

Two issues in particular led me to work with your colleagues, Republicans John Sununu and Judd Gregg to block the bill. One is the issue of MTBEs and the right to sue. We have here on Long Island, we have our whole watershed, we have 27 water districts who may not have any water anymore because the MTBEs went into their water systems. We can't stand by as their taxes might go up a thousand or $2,000 to have to build a new watershed.

And the second was imposing ethanol on the East and West Coasts. Our gas prices, as you say, are high enough. If this energy bill passed, we would be forced to pay for ethanol, even if we didn't buy it, which we wouldn't because it is so expensive to ship from the Midwest. We would love a compromise. In fact our bipartisan group, including—I guess it is five. There are five Republican Senators from the northeast, all who voted against it, every one of them. But our bipartisan group has reached out and said you solve—you give us a waiver on ethanol. You want to use ethanol in Texas or—well California doesn't want to use ethanol. Illinois, you want to use it in Illinois, that is great. Don't force us to use it when gas prices are high enough.

And on MTBEs, allow the process to continue. We have had negotiations with some of those who have spilled these MTBEs. Long Island just has one aquifer. You pollute it and you ruin a water supply for millions. So I would love to sit down with you and work out those two pieces, as would all of our bipartisan coalition. But the energy bill has to serve the whole country, not just a portion of it.

Chairman BARTON. Well, the energy bill that is being blocked from a vote because of the two votes needed for cloture——

Senator SCHUMER. It is four by the way. It went down two.

Chairman BARTON. Has a very good reliability section on electricity that would help the northeast tremendously. It doubles the funding for the leaking underground storage tank program that would solve the real problem of MTBEs. I mean, I could go on and on. But if it never gets to a vote, I mean, then there is no compromise at all if we can't get it up for a vote.

Senator SCHUMER. It needed two votes about 4 months ago. Now, it needs four votes.

Chairman BARTON. Well, if I get you and Senator Clinton, it is back down to, we need two votes.

Senator SCHUMER. Well, I can't speak for Senator Clinton.

You give us a waiver on ethanol, allow the MTBE process to go forward, don't retroactively stop lawsuits that have been going to help the districts, I will support the bill. I have made that clear from the get-go. And I am not saying change what it does in your area, but at least make it work for us.

Chairman BARTON. Well, we—I will take that under consideration.

Senator SCHUMER. Thank you.

Chairman BARTON. But we want to see some movement our way, too, from the Senate.

Mr. HALL. All right. I thank the chairman and thank the Senator. Enjoyed the debate, but, you know, really the people that we have to think about right now are the youngsters that are going to have to go overseas and take some energy away from someone when we don't have enough of it right here at home. That is the real thing. And we all surely can get together when it is that important.

I thank you, Senator, and if you need to go, we understand. If you would stay, we would be honored to have you stay.

Senator SCHUMER. I am happy to stay.

Mr. HALL. The Chair recognizes Mr. Pickering for 3 minutes, and 2 minutes is already gone.

Mr. PICKERING. Mr. Chairman, thank you and thank you for this hearing. I enjoyed the last colloquy between our colleagues.

A couple of principles that I think should guide us in our deliberations here: One, Congress should not favor one State over another. This is a dispute between States. I hope that they can reach a compromise and work through the different issues. But it sets a very dangerous precedent that a large State could dominate a small State. And being from a small State, I think that is a very dangerous precedent to establish.

Two, the solution should be part of a comprehensive solution to our Nation's energy policy. As Chairman Barton said, there are two, possibly four, senators that would break the filibuster in the Senate and allow all regions to benefit from greater energy reliability, greater transmission generation, distribution. It would have a mechanism that would resolve disputes between States. So as you look at who is responsible here, as far as solving this problem, that is very—and I agree with the senator from New York.

It is a very significant issue for New York. It could play a role in the reliability of electricity in New York. If there is a blackout in New York, this could give a back-up that would allow the reliability and the energy needs of his State to be met.

But it is hard for me to imagine why, if that is the case, that we could not find a way to move the energy bill through the Senate. If it is that important, that significant, if it has that much at stake, then I believe it should be part of a solution to have legislation—comprehensive legislation—that is good for my region, good for the northeast, good for the Midwest and good for the west—done and passed in a fair way. So with the stakes this high, I don't think that we should be playing a game of political chicken and saying that the responsibility is with everybody else but not with the New York senators. It starts there; it ends there.

And when they are able to find a way to get the legislation, the comprehensive energy bill that is good for every region, passed through the Senate, then I think that they have the credibility to be able to come and ask for a specific issue that benefits their State.

With that said, I yield back my time.

Mr. HALL. Thank you.

At this time, we would recognize—brevity is wonderful here. We recognize Congressman Green, the gentleman from Texas for 3 minutes. And you will be rewarded if you don't use all 3.

Mr. GREEN. Thank you, Mr. Chairman. But knowing your rewards, I will take my 3 minutes.

Mr. HALL. Your times is expired.

Mr. GREEN. Well, let me say something nice. Chairman Hall, I want to thank you for holding this hearing because I think this is an issue that talks about the need for a National energy policy on a localized basis.

The Cross Sound Cable, I think, is so important, I am glad to see our colleagues here and a former colleague who is now in the Senate. The Cross Sound Cable is a classic example of a project addressing both the basic and urgent energy supply needs just as urgent as energy reliability needs.

The Long Island Power Authority tells us that, during the peak summer demand, they are within 1 percent of capacity. As a result, last August, the northeast, including Long Island, had the equivalent of a heart attack. The Cross Sound Cable is the bypass surgery that is needed to relieve the clogged arteries of Long Island, New York.

And I commend our colleague Congressman Bishop for recognizing the urgent need to turn on the Cross Sound Cable immediately and permanently and look forward to his testimony. With the stability of long-term contracts and redundancy of interconnection, the increased flexibility provided by cable will greatly benefit the entire region.

Energy Bill H.R. 6 contains a provision that is calling for the final Federal siting authority transmission facilities siting to the similar—to the authority exercised by FERC over natural gas pipelines. H.R. 6 provides for such authority and limits it to situations where the relevant State or regional authorities are shown to have failed to act appropriately with regard to facilities for areas found by the Secretary of Energy to be transmission constrained.

I think the Cross Sound Cable is a classic case of why this provision is necessary to address this problem in interstate commerce today.

And again, Senator, I would hope the Senate would deal with the energy bill. And of course, there are some other things you and I disagree on, but I would like to see the full energy bill pass because I think we need it for our country.

But this is an example of one of the local needs that has to be done.

And again, thank you Mr. Chairman. I will look forward to the testimony.

Mr. HALL. All right. The Chair recognizes the gentleman from New York, Mr. Fossella.

Mr. ISSA. The gentleman from California, Mr. Issa. But that is all right. We are kind of look-alikes. Vito Issa.

Senator Schumer, you just got another ally up here on the dais, and he is not even present. You know——

Mr. HALL. And his times expired for sure. And your time is almost over.

Mr. ISSA. My time has expired again. I will take Vito's time.

You know, we use a lot of expressions here in the Congress. You use even more in the Senate. You know, the expression that you know Nero fiddled while Rome burned, to a certain extent, speaks well here today. Both your State, New York and California, the East and the West Coasts have experienced—and Connecticut—have experienced very tight constraints on its energy supplies. In the information age, in the modern era, if we have people, but we don't have communication, which needs energy, and don't have energy, which runs every machine that makes our world go round, then in fact we are the Third World again. And we are not very good at being the Third World. As a matter of fact, we are real bad at it. And China and India and other countries still are pretty good at it.

So we have to make sure that we have reliable energy, reliable communication. And that is this committee's primary responsibility as it falls in that way. And so, rather than fiddling while Rome burns, I would ask you, Senator, even though you and I see each other in the gym with great regularity, to our mutual benefit, is there something between the colloquy that you had with the chairman—in other words, as a Californian, don't want to be paying for Midwest ethanol to make corn farmers happy forever, even if we have no need for them.

But I recognize that an abrupt halt in consumption, at a time in which they have planned and it is part of the economy also is unacceptable to many Members of this body and the one on the other end of the Capitol. So let me ask you, would you be willing to consider and take back to your body, in order to move this issue and others, some form of a—once our States have established an alternative to ethanol, which we have not done, neither one of us has certified alternatives, but once we have done it, to have a phaseout, a period, mutually acceptable, sufficient to allow ethanol to—and the underlying farmers not to abruptly lose it, perhaps even one that says essentially, as consumption rises, we get phased out.

And at the same time, recognizing MTBE, which also has polluted our watersheds—and we have multiple, but they all have the same problem. And we are very concerned about it. Some form of a fund in lieu of absolute liability so that at least there would be predictability. And I believe that reasonable parties on both sides could come to at least agreement to agree, and then we would find the numbers.

Could you consider that? And I know this is an opening statement, but I would appreciate a response.

Senator SCHUMER. Yeah. No, I think those are both excellent questions. On the second, I have proposed that. But it has to be a fund—and I know that Chairman Barton mentioned that the leak fund has been doubled. It wouldn't even cover Suffolk County's

needs, let alone the whole country's. It is a very small fund. It has to be much larger.

But I have proposed to some of my colleagues from Texas that we do just what you said on MTBE. I don't care about the liability stuff. I don't care about the ethos of lawsuits. I just want to make sure that the homeowner—let me tell you a little example. I went and visited Fort Montgomery. A lot of retired people right across from Westpoint, they took their whole savings, invested it in their little homes after they served our country for 20 years. Now they have to drive a mile to take a shower. They have to buy all bottled water, all because a nearby gas company, the gasoline went into the water. They didn't tell them. They didn't do anything. They are ready to negotiate. So yes, a fund would do the job.

On ethanol, as you know, it is not just phasing out the use of ethanol. What the bill does, it says you have to pay for ethanol if you don't use it. Now, maybe there is no alternative in California. We have an alternative in New York. I have talked to Mr. O'Malley and others, the head of our largest refiner——

Mr. ISSA. We have an alternative. We just don't have it yet approved.

Senator SCHUMER. We can do it. They can crack the oil differently and meet the clean air standard, and they will do that because it is still cheaper than ethanol. But then they have to pay what is called an ethanol credit. It is the most anti-free-market thing—I know you are an advocate of the free market, as am I—that I have ever heard. And we know why it is done. I can't sit there and let my New York drivers pay another 20 or 30 cents a gallon, which is what would happen, because the Midwestern corn farmers and lots of these ethanol producers want to do it.

So all we are asking on that one, give us a waiver. Not on the Clean Air Standards; keep the air clean. But if, in certain areas, it makes more sense to use another process, other than ethanol or MTBEs for that matter, give us the waiver. That is all. It is very simple again.

You need four more, you need five votes, because we have 56 now. It went down two. And every one of my northeast colleagues—this is not an issue of party. This is issue of maybe region. Your two senators have said the damage that would occur if you imposed ethanol on California, Diane Feinstein has led the charge. And so—and I know that Congressman Cox has been out there as well. It is anti-free-market. It is unfair, and I think it is unfair to ask my drivers to pay 20, 30 cents a gallon to get some of the other good things, the reliability stuff, in the energy bill.

And I would say that every one of you on this committee, if your State were in that position, would do the exact same thing we have done.

Mr. HALL. In order to be fair with the other participants, I would ask that you make your statement, and then we will have the questions and answers later.

The gentleman has finished his statement.

Mr. ISSA. Yes, Mr. Chairman. Thank you.

Mr. HALL. All right. At this time, we recognize Mrs. McCarthy, the gentlelady from Missouri for 3 minutes.

Ms. MCCARTHY. Mr. Chairman, I would like to waive that and get to the panel.

I am just so glad to see each and every one of you. This is a joy, so I will put my remarks in the record and let's give you some more time.

Mr. HALL. I thank the gentlelady.

The gentleman from California, Mr. Cox.

Mr. COX. Thank you, Mr. Chairman.

I will be very brief, particularly because we have a good opportunity with our colleagues from both sides and from both States, as well as FERC and DOE and representatives from New York and Connecticut.

So rather than read you my opening statement and tell you how I would solve this problem, I just want to suggest to those who are going to give opening statements and testimony that, if you would, I would like you to help me understand a couple of things. First, given that the Connecticut Department of Environmental Protection has agreed that the cable's operation as it was installed would lead to no environmental harm or hinder navigation in the harbor, why can't we, while methods for reaching the required depth are devised, permit operation of the cable?

Mr. HALL. The gentleman will have a chance to answer that when we question the panel. You go ahead with your statement.

Mr. COX. I am not asking questions to anybody. This is just my statement.

Mr. HALL. Oh, I am sorry. Go ahead. I didn't mean to interrupt.

Mr. COX. Second, didn't we learn from the August 14, 2003, northeast blackout that our electrical networks' vulnerability and the general need for greater reliability should be uppermost in our decisionmaking?

Third, why so soon after the biggest blackout in North American history would anyone want to make it harder to get power where it needs to go?

And last, as a Californian who has seen what our State's decades-long failure to build new generating capacity has meant for us and the problems that that has created, why is it that the States of New York and Connecticut can seemingly agree on only one silly point, which is that both would prefer to feed the ever-growing needs of their populations by getting their power from somewhere else, rather than building new generating capacity of their own?

I thank you, Mr. Chairman.

Mr. HALL. I thank you.

The Chair recognizes the gentleman from Illinois, Mr. Shimkus, for a fast 3 minutes.

Mr. SHIMKUS. It was going to be really fast, but based upon some of the comments, Mr. Chairman, first of all, in the energy bill, if you negligently handle and spill MTBE, there is a liability and you are liable to be sued. This—the energy bill provision is for faulty products status which we here—and you are a Member—approved MTBE and the Clean Air Act. So let's put that aside.

Second, energy security and ethanol—I am not going to belabor it. I would just say that, right now, anywhere across this country, 7 to 10 percent of fuel being used right now is ethanol. Where are we going to get the additional 7 to 10 percent fuel, gasoline, that

is being displaced by ethanol, and at what cost? There is a benefit, and some States actually have lower prices because of the ethanol additive right now.

Third, wholesale electricity is an interstate commerce issue and is under the jurisdiction of our committee. It is critical for market competition, lower prices and reliability we have this provision in the national energy plan. We worked real hard. I look forward to hearing, but it is very curious that the northeast would now ask for special exemptions. We do have legislation that would fix many of these problems. I yield back my time.

Mr. HALL. All right. Thank the gentleman.

Congressman Israel or Bishop would you like to make an opening statement.

Mr. ISRAEL. Mr. Chairman, let me just thank you very much for extending us this courtesy. And in deference to all of my colleagues, I would like to submit my statement for the record.

[The prepared statement of Hon. Steve Israel follows:]

PREPARED STATEMENT OF HON. STEVE ISRAEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

The blackout that occurred across North America last August reinforced my belief that the United States must pursue a national energy policy that fosters greater energy security and reliability. The 24-mile Cross Sound Cable that runs from Shoreham, NY to New Haven, CT is a microcosm of the challenges that lay ahead. It is unfortunate that this issue is pitting New York and Connecticut against one another. The blackout in August of 2003 illustrates the sense of urgency and fully demonstrates the consequences of inaction, complacency and parochialism. We must look past the rhetoric and seek a feasible approach to bring greater energy security and reliability to the Northeast region of the United States.

Since August 28, 2003, the Cross Sound Cable has provided 330 megawatts of power to Long Island and helped stabilize this fragile power grid. It should be noted that this cable does not run one-way, but has the potential to send power back to Connecticut as well. An advantage of the Cross Sound Cable is that it has successfully smoothed out system spikes in both New York and Connecticut. In fact, the Cross Sound Cable provided voltage support nearly 100 times since August of 2003 with nearly 90 percent of requests for support coming from the New England Region.

When operating on a full-time basis, the Cross Sound Cable responds automatically to system disturbances and helps reduce congestion in Connecticut. Since last August, the Cable was used 17 times for stabilization due to lighting strikes, transformer failures, transmission line faults and other events. It is important to note that 12 of the 17 responses were for disturbances to the grid in Connecticut. Additionally, the Cross Sound Cable will enable Connecticut to relieve internal congestion by circulating power through Long Island and back to isolated parts of the state. "Loop wheeling," which is only possible by using the Cross Sound Cable, enables power to flow from Connecticut to Long Island through the Cross Sound Cable and back to southwestern Connecticut via the existing 1385 Cable.

The Cross Sound Cable is not about one state siphoning power from another. Rather, the Cable will be used to benefit energy customers on both sides of the Long Island Sound. In fact, Long Island has already shown a willingness to send power to Connecticut to help meet energy demand. On July 2, 2002 during an extended heat wave, power was sent to Norwalk, CT using the 1385 Cable that runs underneath the western portion of the Long Island Sound. There is no reason to believe that Connecticut will not also benefit from the Cross Sound Cable in this manner.

I applauded the Secretary of Energy for taking previous steps to ensure greater energy reliability by authorizing use of the Cross Sound Cable on two separate occasions. I am concerned by the timing of the most recent action to terminate use the Cross Sound Cable and I am troubled by the belief that the Secretary must now wait for a "true emergency" to permit its use again. Families and businesses in the region deserve more than a wait-and-see approach to energy security. I am not confident that a bureaucratic process can effectively respond to the known uncertainties in the power grid. The real question is how long will we have to wait for the Secretary of Energy to declare, for the third year in a row, a power emergency that

energizes the Cross Sound Cable? The Old Farmer's Almanac is telling the region to "expect the worst heat wave in several years, with oppressive heat and humidity" in mid-August of this year. Spring temperatures are already above seasonal averages and air conditioners are beginning to drain from the power supply.

I believe we must act quickly to reinstate use of the Cross Sound Cable to avoid unnecessary delay and reduce the vulnerability to the region's energy grid. I sent a letter to Energy Secretary Spencer Abraham on May 14, 2004 along with Congressman King, other members of the Long Island Congressional Delegation, and all three New York members on the House Committee on Energy and Commerce. We respectfully requested that the Secretary of Energy rescind the termination of Emergency Order No. 202-03-02 and allow permanent use of the Cross Sound Cable. I eagerly await the Secretary's response and hope he will quickly act to re-energize the Cross Sound Cable.

I have also introduced legislation with Congressman Tim Bishop that would authorize use of the Cross Sound Cable. H.R. 4349 would permanently reinstate Department of Energy Order No. 202-03-2 unless it rescinded by an act of Congress. This legislation would provide all necessary authority for the Cross Sound Cable to operate on a full time basis. If the Secretary of Energy were unable to rescind the termination of the Cross Sound Cable, and with comprehensive energy legislation stalled, I would hope for quick action on H.R. 4349.

The Cross Sound Cable is part of a larger national struggle to enforce reliability standards and foster greater energy stability throughout all regions of the country. The New York economy can ill-afford additional energy costs and unstable supply lines. I am confident that we can work together to find a long-term solution to this problem.

Mr. HALL. Fine. Without objection. Mr. Bishop?

Mr. BISHOP. Mr. Chairman, I would take the same position. I thank you so much for convening this hearing, but I will submit my remarks for the record as well. Thank you.

Mr. HALL. All right.

I thank all of you and thank you for your brevity, and I thank you for your answers, Senator. If you have to leave——

Senator SCHUMER. Thank you Mr. Chairman. I appreciate the courtesy, and I enjoyed the dialog and hope we can come up with a compromise on the energy bill. And I hope we can move forward with the cable.

Mr. HALL. Go straight to work on the energy bill, and we will rig the drawing for you in Texas.

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Thank you, Mr. Chairman, for calling today's hearing.

While all of us are hopeful that New York and Connecticut resolve their outstanding differences over the Cross Sound Cable, there is a larger issue that this Subcommittee needs to address. On August 14, 2003 our nation experienced the worst blackout in our nation's history. More than 60 thousand megawatts of power was cut off from those who needed it, leaving 50 million consumers without electricity. Those consumers—our constituents—want us to ensure that it never happens again.

While I am certain that the Cross Sound Cable has importance to those living in Eastern Connecticut and Long Island, New York, it is far from clear whether its operation or non-operation of this cable will have any major impact on the broader issue of the reliability of our nation's electricity grid. In fact, in its May 7, 2004, order terminating the requirement that the Cross-Sound Cable operate, the Department of Energy (DOE) cited the April 2004 report of the U.S.-Canada Power System Outage Task Force, which it stated did not "identify any particular role that the Cross-Sound Cable would have played in stopping the spread of the outage . . .". Based on that finding and other information, the Secretary of Energy found an emergency no longer exists, that DOE's Order should be terminated. The Secretary also announced that DOE would "continue to monitor the transmission and electric reliability situation in New England and New York" and that the Department might issue additional orders if circumstances changed.

So, what do we need to do to address the potential of a repeat of last year's blackouts?

First, I think that we should adopt H.R. 3004, which was introduced by Representative Dingell last year, and which I have cosponsored, which would make electricity reliability standards mandatory and enforceable. Democratic members of the Committee have been pressing for action on this legislation for several months, but the Republican majority has chosen instead to link its passage to enactment of the Bush-Cheney energy plan, which is filled with other extraneous special-interest provisions for the oil, gas, and nuclear industries and which would weaken our nation's environmental laws. In fact, even the Bush Administration's own Department of Energy's Energy Information Administration has admitted that enactment of the Republican energy bill would have a negligible impact on energy production, consumption or prices. I don't think we should allow H.R. 3004 to be held hostage any longer. We should take it up now and pass it.

Second, with respect to the situation in New England and the Northeast, it appears that while some transmission upgrades may be needed, the Cross Sound Channel has little real relevance to the reliability issues that are most pressing in our region. In this regard, I note that in testimony submitted to the Subcommittee in connection with today's hearing, ISO New England, the operator of New England's wholesale transmission system, has stated that while it supports operation of the Cross Sound Cable, the question of whether or not the cable is in operation has virtually no effect on New England's electricity transmission.

In particular, ISO New England's testimony states that:

> "The Cross Sound Cable has no bearing on the electric reliability situation in Southwest Connecticut. It is simply not in the right location. The inadequate transmission system limits transportation of power from the cable location to the area of most need."

ISO New England's testimony concludes that "operation of the Cross Sound Cable does not improve the daily reliability problems that exist in Southwest Connecticut due to an extremely weak transmission system." At the same time, the ISO notes that "There may be, however, emergency situations in which either New York or New England would benefit by having an additional external interconnection from which to receive emergency power." Instead of the Cross Sound Cable, the ISO notes that "the 1385 cable between Southwest Connecticut and Long Island is a critical interconnection, and is in urgent need of repair" and that "When addressing the issue of interconnections between Connecticut and Long Island, it is appropriate that the situation on the 1385 cable also be addressed and resolved." I would urge FERC and state regulators to address this matter quickly, as it appears to be much more relevant to the issue of regional reliability than the Cross Sound Cable.

Finally, I think that the Subcommittee needs to look very closely and skeptically at some of the proposals that are now under consideration at the FERC to provide transmission utilities with higher "incentive rates" for meeting their obligation to provide wholesale transmission service, and to simultaneously provide generators with higher "locational installed capacity" (or LICAP) payments to subsidize uneconomic operations. While many of these proposals are being couched in arguments about reliability, it is not at all clear to me why such increased payments are justified and whether they bear any reasonable relationship to ensuring system reliability. FERC has a duty to help ensure that our electricity grid is reliable, but it also has a responsibility to ensure that the rates charged to consumers are just and reasonable. Why should FERC allow a monopoly transmission owner to receive high "incentive" payments in excess of the guaranteed return on equity that has historically been provided? And why should FERC authorize a LICAP subsidy for generators? Are such steps really necessary for grid reliability, or are they just a mechanism for increasing utility and generation company shareholder profits? These are questions that I think the Subcommittee needs to explore in much greater detail.

Thanks again for calling today's hearing, Mr. Chairman. I look forward to reviewing all of the testimony.

Mr. HALL. The Chair is very pleased to recognize Ms. DeLauro. She is a long-time Member and a lady that works just day and night, is the only time she works and is highly respected. We are happy to recognize you for as much time as you take.

**STATEMENT OF HON. ROSA L. DELAURO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT**

Ms. DELAURO. Thank you so very much Mr. Chairman. It is a delight to be here before your committee. I am hopeful that the testimony of myself and my colleague from Connecticut, Mr. Shays, will persuade you in a different direction.

I also want to welcome the Attorney General of the State of Connecticut here this morning, Attorney General Blumenthal. Delighted to have him here.

And to the ranking member, thank you for your time and attention to this issue. If I can just make one——

Mr. HALL. Rosa, would you turn your mike on.

Ms. DELAURO. Here we go. Thank you again, Mr. Chairman.

And I guess I would just say that I miss you, so I will just leave it at that.

I wanted—Mr. Pickering is gone, but I would like to pick—there he is. I am sorry. I think you were exactly right when you said that we shouldn't be favoring one State over another. But let me refer you to Section 1441 of the energy bill, and quite honestly, if you read that section, you will see that that is what precisely this does in the energy bill because it requires that the cable be activated in perpetuity. And that is something I wanted to call to your attention, because I don't think it is the role to take sides, one State against another. And I commend you for that comment.

I am delighted to have this opportunity to share my concerns regarding Cross Sound Cable, which stretches from New Haven Harbor in New Haven, Connecticut, through the Federal navigation channel and across the Long Island Sound to Brookhaven, New York.

Mr. Chairman, to allow this transmission cable to operate indefinitely, without complying with the conditions and the requirements that were outlined in both the Federal permits and in the State permits issued for the construction, installation of the cable is to condone the kind of poor energy planning that no one sitting here today wants.

In that sense, I also ask that you not penalize the hundreds of commercial shipping and family fishing vessels that use New Haven Harbor by intervening in this dispute between the States and allowing this cable to operate.

Since its initial proposal in 2001 the Cross Sound Cable has found steady and vocal opposition in Connecticut. And it is just not among those elected officials who are often quoted in the daily newspapers, but from communities of all background, the harbor pilots who utilize New Haven Harbor's Federal Navigation Channel, the fishing industry, which is a sizable proportion of the revenue of the State of Connecticut, environmental groups, yes, and concerned citizens. Groups, quite honestly, which rarely share any kind of a common interests. They all came together in an effort to stop the installation of this electricity transmission line.

The proposal went through the regulatory process, both at the State level and at the Federal level. It eventually received the necessary permits for construction and for installation. However, the permits were not issued without consideration of the very, very valid economic, navigational and environmental impacts that this

project would have, both on the Federal Navigation Channel and the Long Island Sound. In both the Federal and the State permitting process, numerous conditions were outlined by the regulatory bodies, and they were accepted by Cross Sound Cable.

Among those conditions was the requirement that the cable be buried 6 feet below the seabed, in accordance with the Army Corps of Engineers requirements for harbor navigation. That condition is not met in several places. If the city of New Haven, which I represent, ever wanted to widen and deepen the harbor, it would require the removal of the cable or the burial of the cable to a further depth. New Haven is a port. And if we wanted, in order to bring in additional cargo vessels and increased economic activity around the port, this would be extremely difficult. The burial cannot occur without drilling through bedrock, which would have significantly adverse effect on the shellfish industry.

Unfortunately, Cross-Sound Cable did not heed the warnings of the harbor pilots and fishermen. These are folks who have been in these waters for generations. They come from families who have utilized the harbor, and they made it clear that it would be impossible for Cross-Sound to install the cable at the required depth throughout the channel using the proposed techniques because they were going to come into contact with that bedrock. It was known from the outset that this was going to happen.

So instead of returning to the drawing board, what the company decided to do was to move forward, and as predicted, they ran into problems in several areas where they were unable to meet the required depth conditions. It is my understanding that in one of these problem areas, it is probable that the company will not be able to meet the requirement without significantly more damage to the channel.

Following the multi-state blackouts of August 2003, Energy Secretary Abraham issued an emergency order that allowed the cable to operate indefinitely. The basis of the decision was that the Cross Sound Cable would act to stabilize the electric grid. On May 7 of this year, Secretary Abraham issued another order that called for the cable to cease operations. In issuing the May 7 order, Secretary Abraham found that the emergency conditions that required activation of the cable no longer existed.

I applaud the secretary for recognizing the reality of current conditions and acting appropriately. I just might add a note that, by February, the blackout commission's interim report laid the blame squarely on the shoulders of transmission problems in Ohio.

No one wants—no one here wants to tie anyone's hands in terms of an emergency. That would be wrong, and this is not what we are talking about here. What we are talking about is a law and about abrogating what was laid down.

In the last month, both the New York Independent System Operator, the New England Independent System Operator, the two organizations responsible for operating the region's electric power grid have released reports on the electricity supplies for the summer of 2004. Both reports express confidence that, with normal summer weather, there will be an adequate supply of electricity to meet demand. Even in the event that summer weather conditions

are unusually warm, there is no justification for reactivating the cable.

Put simply, Cross-Sound Cable, LLC has a responsibility to meet the conditions of both the Federal and the State permits. And again, it is whether or not Cross-Sound Cable will be allowed to break the law. Until it can do so without further degradation of the New Haven Harbor or the Long Island Sound, Cross-Sound Cable should not be able to financially benefit from the operation of the cable. That is simply a matter of good and responsible business practice.

The Secretary's August 17 order and efforts to legislate the activation of this cable represent an unfortunate decision to trump the regulatory measures taken by several other Federal agencies, including the Army Corps of Engineers, the EPA, the Fish and Wildlife Service. That order, H.R. 6 and the legislation that has been introduced by members of the New York delegation all represent a real assault on State and Federal regulatory decisions. Failure to address the very real concerns of Federal and State regulators would essentially allow the company's bottom line, to supersede any and all regulatory authorities.

I just state here that this is not good public policy. It is a dangerous path for us to travel. I hope the committee recognizes the need to remove this language from the energy bill before it is reconsidered.

With that, I thank you so much for indulging the amount of time, Mr. Chairman.

I appreciate all of your courtesy here today.

I thank the distinguished ranking member as well and the committee for giving me this opportunity to speak to you. Thank you.

[The prepared statement of Hon. Rosa L. DeLauro follows:]

PREPARED STATEMENT OF HON. ROSA L. DELAURO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. Chairman, distinguished colleagues, thank you for this opportunity to share with you my concerns regarding the Cross Sound Cable which stretches from New Haven Harbor in New Haven, Connecticut, through the Federal Navigation Channel, and across the Long Island Sound to Brookhaven, New York. I am grateful to have this opportunity.

Mr. Chairman, to allow this transmission cable to operate indefinitely without complying with the conditions and requirements outlined in both the federal and state permits issued for the construction and installation of the cable is to condone the kind of poor energy planning that no one here wants. In that sense, I also ask that you not penalize the hundreds of commercial shipping and family fishing vessels that use New Haven Harbor by intervening in this dispute between the states and allowing this cable to operate.

Since its initial proposal in 2001, the Cross Sound Cable has found steady and vocal opposition in Connecticut ' not just among those elected officials who are often quoted in the daily newspapers, but from communities of all backgrounds. Environmental groups, the fishing industry, the harbor pilots who utilize New Haven Harbor's Federal Navigation Channel, and concerned citizens ' groups which rarely share common interests all came together in an effort to stop the installation of this electric transmission line.

The proposal went through the regulatory process both at the state and federal levels and eventually received the necessary permits for construction and installation. However, these permits were not issued without consideration of the valid environmental, economic, and navigational impacts this project would have on both the Federal Navigation Channel and the Long Island Sound.

In both the federal and state permitting process, numerous conditions were outlined by regulatory bodies and accepted by Cross Sound Cable. Among those conditions was the requirement that the cable be buried, quote, "no less than 6 feet below

the seabed or to an elevation of minus-48 feet mean lower low water, whichever is greater, within the Federal Navigation Channel in New Haven Harbor . . ." In addition, under the permits, specific technology was accepted which was to be used by the company to install the cable.

Unfortunately, Cross Sound Cable did not heed the warnings of harbor pilots and fisherman—many of whom come from families who have utilized the Harbor for generations—that it would be impossible for them to install this cable at the required depths throughout the Channel using these techniques because they would come into contact with bedrock. Instead of returning to the proverbial drawing board, the company chose to move forward and, as predicted, ran into problems in several areas where they were unable to meet the required depth conditions. It is my understanding that in one of these problem areas, it is probable that the company will not be able to meet this requirement without doing significantly more damage to the Channel.

Following the multi-state blackouts of August 2003, Energy Secretary Spencer Abraham issued an emergency order that allowed the cable to operate indefinitely. The basis of his decision was that the Cross Sound Cable would act to stabilize the electric grid. On May 7th of this year, Secretary Abraham issued another order that called for the cable to cease operations. In issuing his May 7th order, Secretary Abraham found that the emergency conditions that required activation of the cable no longer existed. I applaud the Secretary for recognizing the reality of current conditions and acting appropriately.

In the last month, both the New York Independent System Operator (NYISO) and the New England Independent System Operator (ISO-NE)—the two organizations responsible for operating the regions' electric power grid—have released reports on electricity supplies for the summer of 2004. Both reports expressed confidence that, with normal summer weather, there will be an adequate supply of electricity to meet demands. Even in the event that summer weather conditions are unusually warm, this is no justification for reactivating the cable.

Put simply, Cross Sound Cable, LLC has a responsibility to meet the conditions of both the federal and state permits. Until it can do so without further degradation of the New Haven Harbor or Long Island Sound, Cross Sound Cable should not be able to financially benefit from the operation of the cable. That is simply a matter of good, responsible business practice.

The Secretary's August 17th order and efforts to legislate the activation of this cable represent an unfortunate decision to trump the regulatory measures taken by several other federal agencies, including the Army Corps of Engineers, the EPA and the Fish and Wildlife Service. That order, HR 6, and the legislation introduced by members of the New York delegation, all represent a real assault on state and federal regulatory decisions.

Failure to address the very real concerns of federal and state regulators would essentially allow a company's bottom line to supercede any and all regulatory authority. That is not good public policy. It is a dangerous path to travel, and I hope the committee recognizes the need to remove this language from the Energy Bill before it is reconsidered.

With that, I would like to again thank the Chairman and the distinguished ranking member for giving me this opportunity today. Thank you.

Mr. HALL. We thank you very much.

At this time we recognize Peter King, the distinguished Member from New York.

## STATEMENT OF HON. PETER T. KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. KING. Thank you, Mr. Chairman, Ranking Member Boucher, members of the committee, I certainly appreciate the opportunity to be here today.

And Mr. Chairman, I was really almost tempted to rely on the eloquence of your opening statement to make our case. But since I am getting paid by my constituents, I better go ahead and make the statement anyway, but it won't be as eloquent as yours was.

I am really proud to testify here today on the importance of maintaining the Cross Sound Cable. The cable is a vital tool that provides energy security and reliability to the northeast region of

the country. I think it is important to emphasize the concept of the region. Contrary to what we hear from Connecticut officials, the Cross Sound Cable has and will continue to benefit both Long Island and Connecticut. And the environmental fears that the Connecticut officials are expressing with the cable are just not supported by the facts.

In fact, they have even been rebutted by Connecticut's own Department of Environmental Protection, as well as the New England Office of the Army Corps of Engineers. And I do have letters here, one from the New England District Corps of Engineers, December 30, 2002, and also Connecticut's Department of Environmental Protection. And Mr. Chairman, I would like to ask unanimous consent to have these submitted into the record.

Mr. HALL. Without objection they are admitted.

Mr. KING. Actually, I was going to read them until Mr. Shays, in a typical bit of Connecticut pilfering, took them from me.

No, seriously, I would just like to quote actually one section, and then the entire letter is made part of the record. But the Army Corps of Engineers said, "The Corps of Engineers in consultation with the National Marine Fishery Service has determined there would be no undue short-term environmental harm or interference with navigation with the cable in its present location." I think it is important to keep that in mind.

Also, as Senator Schumer pointed out, the dredging that is currently taking place in the New Haven harbor is doing significant more environmental damage than the cable would. Now, it is essential we work together as a region to expand our energy infrastructure and to increase supply. We are all too aware of the economic insecurity consequences of last year's blackout. Our region can't afford another power failure, and it is imperative that Connecticut and New York find a way to cooperate on this issue.

This is a high voltage direct current cable system so the Cross Sound Cable allows for electricity to flow either way, and it is has been vital to stabilizing the region's energy grids since it was turned on. The electricity does not automatically flow in one direction but rather is directed by operators when a need is detected. In addition, it has responded quickly and automatically 18 times to reduce transmission system disturbances caused by lightening strikes, transformer failures, transmission line faults and other events and provided preventive voltage support over 100 times in Connecticut and New York under the direction of system operators.

In fact, it was prepared to send 200 megawatts of power to Connecticut during a particularly cold spell last January. Even the Connecticut Energy Advisory Board in its energy plan for Connecticut submitted in March 2004 stated, "The Board believes that extending the existing moratorium is potentially counterproductive. During the first moratorium, the task force produced some helpful deliberative work pertinent to our process and standards. However, the second moratorium has restricted State authorities from negotiating acceptable compromises for projects like the Cross Sound Cable and the 1385 cables in Norwalk."

Mr. Chairman, the Cross Sound Cable provides energy security and reliability to the region. But it is also important to the region's economy. As we saw last August, much of the northeast was shut

down when the blackout occurred, costing businesses millions of dollars. Neither New York nor Connecticut can afford another power failure.

In addition, the Long Island Power Authority and its top man, Richard Kessel, will be testifying in a subsequent panel. They have estimated that Connecticut's failure and refusal to act could lead to $38 million in additional costs this year, which likely would be passed along to Long Island rate-payers. Additional costs will stem from State power authorities mandating utilities be able to sustain the capability to generate a certain amount of electricity. With summer temperatures approaching, now is not the time to reduce the supply.

In conclusion, Mr. Chairman, I want to thank you for inviting me to testify on this issue. I really want to thank this subcommittee for its leadership in improving our Nation's energy policy and increasing reliability in the northeast. I was particularly pleased that there were negotiations last year, even though Ms. DeLauro was opposed to it, that a provision was included that would have made permanent Secretary Abraham's decision to turn on the Cross Sound Cable.

I believe it has to be made permanent. It is essential for New York. It is essential for the Northeast region.

I really know that the subcommittee will go forward with due deliberation. I thank you for this opportunity here this morning, Mr. Chairman. Also I ask for permission to include my full statement in the record. In deference to your desire of expedition, I eliminated many eloquent remarks, but people who want to read the record can see them later on. Thank you, Mr. Chairman.

[The prepared statement of Hon. Peter King and the letter follow:]

PREPARED STATEMENT OF HON. PETER KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Chairman Hall, Ranking Member Boucher, Members of the Subcommittee on Energy & Air Quality: Thank you very much for the opportunity to testify at today's hearing and express my strong support for the Cross Sound Cable. The cable is a vital tool that provides energy security and reliability to the Northeast region of the country. Contrary to what you may hear from Connecticut officials, the Cross Sound Cable has and will continue to benefit both Long Island and Connecticut. In addition, the environmental fears that some Connecticut officials have expressed with the cable are just not supported by the facts. They have even been rebutted by the Commissioner of the Connecticut Department of Environmental Protection, Mr. Arthur J. Rocque, as well as the New England office of the Army Corps of Engineers and various independent interest groups. At this time, I would like to ask for unanimous consent for the purpose of submitting these documents.

Additionally, private specialists in marine and freshwater site surveys, such as Ocean Surveys Inc., has stated that the cable has had only "minor/short term effects on bottom dwelling organisms located in the Sound" and the New England District of the Army Corps of Engineers asserts "there will be no undue short-term environmental harm or interference with navigation with the cable in its present location until full burial depth can be achieved." Finally, according to Commissioner Rocque, the dredging that is currently taking place in New Haven Harbor is doing significantly more environmental damage to the area than the cable would do.

It is essential that we work together as a region to expand our energy infrastructure and increase supply. We are all too aware of the economic and security consequences of the August 13th blackout. Our region cannot afford another power failure and so it is imperative that Connecticut and New York cooperate on issues such as the Cross Sound Cable.

The Cross Sound Cable is essential to increasing the supply of electricity to Long Island and preventing future power failures. According to the Cross Sound Cable

Company, it has "operated at 98% availability since September 2003 and transmitted an average of 200 megawatts per day to Long Island and nearly 500,000 megawatt-hours of power to Long Island." Since it is a high voltage direct current cable system, the Cross Sound Cable can allow for electricity to flow either way and has been vital to stabilizing the region's energy grid since it was turned on. The electricity does not automatically flow in one direction but rather is directed by operators when a need is detected. In addition, it has "responded quickly and automatically 18 times to reduce transmission system disturbances caused by lightning strikes, transformer failures, transmission line faults and other events and provided preventive voltage support over 100 times to Connecticut and New York under the direction of system operators." In fact, it was prepared to send 200 megawatts of power to Connecticut during a particularly cold spell last January. The operation of the Cross Sound Cable not only increases reliability in the region, but it also decreases Connecticut's reliance on its pollutant emitting power plants [New Haven].

Even the Connecticut Energy Advisory Board in its Energy Plan for Connecticut submitted in March 2004 states, "[the Board] believes that extending the existing moratorium (originally established under Public Act 02-95) is potentially counterproductive. During the first moratorium, the task force produced some helpful, deliberative work pertinent to both process and standards. However, the second moratorium has restricted state authorities from negotiating acceptable compromises for projects like Cross Sound Cable and the '1385' cables in Norwalk."

The Cross Sound Cable provides energy security and reliability to the region, but is also important to the region's economy. As we saw on August 13th, much of the northeast was shut down when the blackout occurred costing businesses millions of dollars. Neither New York nor Connecticut can afford another power failure.

In addition, the Long Island Power Authority (LIPA) has estimated that Connecticut's failure and refusal to act could lead to $38 million in additional costs this year, which likely would be passed along to Long Island ratepayers. Additional costs will stem from the state power authorities mandating that utilities be able to sustain the capability to generate a certain amount of electricity. With summer temperatures approaching, now is not the time to reduce the supply.

In conclusion, I want to thank the Chairman for inviting me to testify on this critical issue and I would like to thank the Subcommittee for its leadership on improving our nation's energy policy and increasing reliability in the Northeast. I was particularly glad to see that during negotiations last year on the energy conference report (H.R. 6), conferees included a provision that would make permanent Secretary Abraham's decision to turn on the Cross Sound Cable. I look forward to continuing to work with you and the Subcommittee on these very important energy issues during the remainder of this Congress.

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STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
*June 13, 2002*

The Honorable RICHARD BLUMENTHAL
*Attorney General of the State of Connecticut*
*55 Elm Street*
*P.O. Box 120*
*Hartford, CT 06141-0120*

DEAR MR. ATTORNEY GENERAL: Thank you for your letter of June 5, 2002, concerning the Department of Environmental Protection's permit number 200102720-MG issued to the Cross Sound Cable Company. While I appreciate your advice and your viewpoint, I believe that your interpretation of the permit conditions for this permit and recommendations regarding the project are inconsistent with past practices of the Department.

While it is apparently true that the cable is not presently installed at all points to the depth specified in the permit, Cross Sound has currently stopped work in compliance with the seasonal restrictions in the permit. As you know, these restrictions were imposed by DEP in order to protect spawning shellfish and anadromous fish. No extension or wavier of these restrictions has been requested; it is unlikely that it would be granted under present habitat conditions even if requested. The permit, however, provides in its terms and conditions for a three-year construction time-period, a standard practice on such permits. Therefore, Cross Sound is clearly authorized to resume their construction activities insofar as they are permitted when the seasonal restrictions expire without any additional authorization from this Department. Should Cross Sound elect to seek modifications of their construction activities under this permit, such modifications would be evaluated to determine

whether or not they constitute minor modification. Under most circumstances and consistent with longstanding agency policy, such modifications would not be deemed either a new application or a new proceeding.

I would be remiss if I did not note my disappointment in your characterization of the impacts associated with both the installation of the cable and the failure to attain greater depths in part of the federal channel as serious, critical and devastating environmental impacts. At no time has any reviewing permit analyst with expertise in marine projects, at either the state or federal level, raised concerns in terms approaching these. Given my own background in marine environments in general and Long Island Sound in particular, I must confess that I agree with the analysts. From an environmental perspective this cable project pales in comparison to even maintenance dredging of the federal navigational channel in New Haven Harbor. Moreover, in terms of direct impact on shellfish beds in particular, neither the cable project nor maintenance dredging begin to compare with the impacts associated with deepening the federal navigation channel. I point this out not to express concern over the permittability of New Haven Harbor dredging projects for which I know you have expressed support; they have been permitted in the past. Rather, I point this out over concern that published rhetoric has eclipsed facts on this project, at least from an environmental impact standpoint.

Without a specific request before me, I think it unwise for me to speculate as to what our conclusion will be on the future options available for the Cross Sound Project. Rest assured, however, that this Department has taken the Cross Sound Cable project very seriously and would have done so even if it were not controversial. We will endeavor to make sure that the applicant completes the project to the best of their ability in accordance with the terms and conditions of the issued permit. Should they do otherwise, we will pursue the appropriate remedy. If that remedy includes the need to enforce any of the terms and conditions of the permit, we will, as we most always do, turn to your staff for assistance.

If you have any questions or any additional comments you would like to make, I would be pleased to receive them.

Sincerely,

ARTHUR J. ROQUE, JR.
*Commissioner*

cc: Jane Stahl, Deputy Commissioner
Charlie Evans-DEP

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DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
*December 30, 2002*

Regulatory Division
CENAE-R-2000-01773

CROSS SOUND CABLE COMPANY, LLC
*Attn: Mr. James P. Nash*
*110 Turnpike Road, Suite 300*
*Westborough, MA 01581*

DEAR MR. NASH: This is in response to your letter of December 23, 2002 regarding the status of the on going effort to reinstall the cable in those areas where the -48' mean lower low water (mllw) depth as required by your Department of the Army permit was not achieved due to physical constraints.

We appreciate your cooperation in responding to our requests for information and moving towards meeting the required depth. We understand you are simultaneously working with Connecticut Department of Environmental Protection, Office of Long Island Sound Programs regarding state approval for the additional reinstallation work as it relates to issues associated with the state moratorium against processing applications for authorizations for cables crossing Long Island Sound until June, 2003.

The Corps of Engineers, in consultation with National Marine Fisheries Service has determined that there will be no undue short-term environmental harm or interference with navigation with the cable in its present location until full burial depth can be achieved. Since you are working in good faith to reach the required burial depth, the Corps of Engineers has no objections to you operating the cable at this time.

However, we will not be relaxing the requirement to bury the cable to -48' mllw and we look forward to working with you and Connecticut Department of Environ-

mental Protection to insure full compliance with the terms and conditions of your permit is achieved as soon as possible.

Sincerely,

THOMAS L. KONING, *Colonel, Corps of Engineers*
*District Engineer*

Mr. HALL. I thank the gentleman.

Your offer to Mr. Shays, your letter reminded me of Henry Wade, former district attorney of Dallas, made a speech and sent his brother a copy of it, and his brother called him and said, good speech, Henry, who wrote it for you? He wrote him back and said, I am glad you enjoyed it. Who read it to you?

You weren't about to read to Mr. Shays, were you?

The Chair recognizes the gentleman.

**STATEMENT OF HON. CHRISTOPHER SHAYS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT**

Mr. SHAYS. Thank you, Mr. Chairman. It is nice to see you in that position as Chair in spite of your misguided statement.

I want to say that Mr. Schumer, like a good attorney, could argue on both sides of the case, and I think he would probably prefer to argue on the other side. The fact is we can all agree there is a clear need for electricity to go back and forth between States to protect regional energy security and ensure there is sufficient generated energy in ample supply to meet present and future demands. We can all agree on that. We may ultimately disagree about the value of environmental protections and review processes in meeting these goals, but we shouldn't.

In the course of setting national energy policy, important environmental concerns cannot be dismissed as some want to. While we must make sure we have plans in place to provide Americans uninterrupted service, we also have a responsibility to future generations to ensure due diligence is done to prevent unnecessary and unavoidable environmental harms and follow due processes established to ensure we adequately consider environmental objections.

Back in 2002, the Connecticut Department of Environmental Protection and the Army Corps of Engineers published minimum environmental requirements for the cable. These were minimum requirements. These included a stipulation for the depth at which cable should be buried. The cable does not comply with these requirements at several points along its course. Its failure to meet this requirement, and its activation despite that significant shortcoming, has been a serious source of concern for Connecticut. It should be for the region and for the entire country.

The fact is the cable does not comply with the State of Connecticut's construction permit that was designed in consultation with the Army Corps of Engineers. It does not comply with the minimum environmental standards established to protect this precious estuary. Its permanent activation could have consequences for Connecticut's ecosystem, oyster industry, power supply and marine business. After ordering the cable indefinitely activated on August 28, Secretary Abraham shut down the Cross-Sound Cable on May 7, an action we are grateful for.

Now, we have had plenty of disagreements between our States, but we have worked over time to clean up Long Island Sound. And when some talk about dredging, we have, in fact, the strongest

dredging requirements, in consultation with our colleagues on both sides of the aisle, of any estuary in the entire country. We are the only estuary that comes under ocean-dumping laws. If it is toxic material, it is not going to be allowed to be the material placed in the sites that have been allocated. So I think that is a red herring.

The bottom line is this: We have a permit process. When they comply with the permit process, then they should be allowed to activate this cable, and until then, they shouldn't.

[The prepared statement of Hon. Christopher Shays follows:]

PREPARED STATEMENT OF HON. CHRISTOPHER SHAYS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. Chairman and members of the Committee, thank you for allowing me to testify today about concerns we have regarding the activation of the Cross Sound Cable, which connects the electric transmission grids of New England and Long Island and transfers power in both directions.

We can all agree there is a clear need for electricity to go back and forth between states to protect regional energy security and ensure there is efficiently-generated energy in ample supply to meet demands. We may ultimately disagree about the value of environmental protections and review processes in meeting those goals.

In the course of setting national energy policy, important environmental concerns are too often dismissed.

While we must make sure we have plans in place to provide Americans uninterrupted service, we have a responsibility to future generations to also ensure due diligence is done to prevent unnecessary environmental harms and to follow processes established to ensure we adequately consider environmental objections.

Back in 2002, the Connecticut Department of Environmental Protection and the Army Corps of Engineers published minimum environmental requirements for the Cable. These included stipulations for the depth at which the Cable should be buried that it does not meet at several points along its course. Its failure to meet those requirements, and its activation despite that significant shortcoming, has been a serious source of concern for Connecticut.

The fact is the Cable does not comply with the State of Connecticut's construction permit. It doesn't even comply with minimum environmental standards established to protect this precious estuary. And its permanent activation could have consequences for Connecticut's ecosystem, oyster industry, power supply and maritime business.

After ordering it indefinitely activated on August 28, Secretary Abraham shut down the Cross Sound Cable on May 7, an action we are grateful for.

Nonetheless, it is still important to recognize that the method by which he had activated the Cable in the first place overrode the State's legally constituted authority to regulate its construction in a manner that protects this important natural resource, and circumvented important review processes in place to ensure the environmental integrity of the project.

Secretary Abraham's decision to activate the Cable and the effort to codify that decision in the Energy Policy Act was simply the wrong way to proceed.

These actions, which followed the August 14 blackout, came despite Connecticut's vigorous opposition and the North American Electric Reliability Council's public assurances that the electric grid in the Northeast had returned to normal operation.

There is a right way and a wrong way for the system to work. State laws need to be respected and when they are overruled, there should be a process that's fair for ensuring their concerns are addressed. In this case, we have a system in place for doing exactly that, but the way in which the Cable was activated bypassed the process and was therefore objectionable.

Mr. Chairman, the bottom line for me is, when dealing with a project of this magnitude, there is a process for ensuring environmental fitness, which in this case, was not followed.

It is clear we must take action to maximize energy security, but environmental review need and must not be compromised in the process.

Mr. HALL. Thank you.

Where you and Ms. DeLauro won't be too despondent, nor Mr. King too jubilant, when I read my statement to you, like you, I

heard it for the first time. The Chairman is supposed to be neutral. I am trying to do that.

At this time I recognize the gentleman from Virginia for any questions he may have.

Mr. BOUCHER. I don't have any questions, Mr. Chairman.

Mr. HALL. The Chair goes to Mr. Pickering, the gentleman from Mississippi.

Mr. PICKERING. My question is what are the current ongoing discussions between the two States? What would be the process if the energy bill, which does have a dispute mechanism in it for how siting is done, work paths, then that would give it a process. What concerns me now is the current process. And I take the point of Congresswoman DeLauro, well, how do we not favor one State over the other, but create a fair process that resolves disputes?

This is an important issue not only for New York and Connecticut, but for all States as we look forward in the future, as we create new generation, hopefully, the need for new transition lines. And then the siting of those lines, whether it is in the Southeast or in the Northeast, are very important. What is the current process? I know that we are currently under appeal, Connecticut. Are there ongoing discussions between the two States to resolve this dispute? If so, what are they?

Mr. SHAYS. I will be happy to jump in, but I would say that when you have Attorney Blumenthal address you, I think he can give you more of the specifics.

There is the general view in Connecticut that this cable will be done and must be done under the permitting process. And so we don't want to concede that, having built it, that possession is nine-tenths of the law. And so the dialog, in our judgment, needs to conform to the permitting process, and let's get the job done.

Ms. DELAURO. Let me—I concur with my colleague because I think the specifics of the legal process are left to the attorney general, and he will be speaking with you. But this is not an issue of whether or not the cable can be a reliable provider of electricity. The question is whether we want to circumvent State and the Federal regulatory process, and risk serious commercial damage and environmental damage to the port of New Haven in this process. That is what this is about.

And you know, if there had been the decision, to move elsewhere or to heed the word of people who understood and knew the Sound and know about the areas where there is bedrock, this would just not be a problem. And to abrogate the law, as I said, for the bottom line of the company does not seem to be the direction that we ought to go in. Thank you.

Mr. KING. Congressman Pickering, I think, indicates there was not really much dialog going on between the two States, I don't believe. However, Richard Kessel, who is the chairman of the Long Island Power Authority, will be intimately involved in whatever talks are going on. He lives with this issue day in and day out. He will be much better qualified than I am to tell you what the nuances and particulars are. My own feeling is there is not much going on constructively between the States.

Mr. PICKERING. Congressman King, earlier Senator Schumer indicated that he would support the establishment of a fund that

would clean up MTBE. As Congressman Shimkus mentioned, there are provisions in the energy bill now saying that if you are negligent, or if you were at fault under normal standards, not under the faulty product which was mandated by the government, but by other standards of litigation, that there is the right to sue.

If we were to work out a compromise on a funding mechanism, and the reality of the political situation—I don't think Speaker Hastert or Leader Daschle would support a waiver on ethanol, that is just political reality, but there is a way that we can solve the MTBE question—would it be in the best interest of the Northeast if that compromise were reached to all come together, Republican and Democrat, to support the passage of a comprehensive energy policy?

Mr. KING. My concern with the energy bill was not the ethanol. I am not pleased with it, but I can live with it. I understand that if you are talking about a national bill, there has to be regional accommodations made, and I understand that.

My concern is with the MTBE, especially as it affected lawsuits that were already in place. As Senator Schumer said, I live in Long Island. It is a sole-source aquifer. There are many water districts that have really been damaged severely, and the property tax impact, you have people's taxes going up 20, 25 percent as a result of this. So my concern was on the retroactive application of the law. But, again, if we can start talking about a fund and have constructive talks, I would certainly support the bill.

Mr. PICKERING. I would just encourage you to encourage the Senators from New York to work with us on that. I think that there is a way that we could resolve that with the fund. I do have—I realize the problem with retroactively rescinding the right to sue, but at the same time it was government-mandated, and we need to now go forward, find a solution that actually cleans it up, cleans the water, helps the people that are affected, as Senator Schumer described, but, more importantly, get a comprehensive energy bill.

I think your leadership in New York of publicly saying so hopefully would help the two Senators as they perform their duties in the Senate. Thank you.

Mr. HALL. I thank the gentleman.

We don't normally question Members. You can volunteer to answer if you want to, but I understand how busy each of you are and other commitments you have. We would excuse you at this time if you want to be excused. We would leave open for everyone here the opportunity to send written questions to you or catch you in the hall or in between votes or something to talk to you. But we really thank you for your time.

Mr. SHAYS. Could I make a short comment, sir? No one has asked the opinion of—my opinion about the energy bill, but I shudder every time I hear the word "comprehensive," because for me it would be comprehensive if it had much more emphasis on economy of energy, increasing CAFE standards. I think you would have found a whole group of people supportive of the bill if we had seen SUVs, minivans and trucks get more of the kind of mileage that you see in automobiles. Then I think the word "comprehensive" could have been attached to this bill in a very fundamental way.

Mr. HALL. I think Mr. Dingell might take a dim view of that.

Mr. SHAYS. I know he would, but that is part of politics.

Mr. HALL. But I think it is good that you bring it up, because we may have the makings of an energy bill if we all get together and give a little.

Mr. SHAYS. If you had that, boy, I would fight for that.

Mr. HALL. You would be a real hero if you could get us the energy bill.

Mr. KING. I said at the beginning this was a bipartisan effort from New York, and I neglected to thank Congressman Israel and Congressman Bishop for the great job they have done along with Governor Pataki. This is bipartisan. They have done wonderful work.

Mr. HALL. Thank you.

Mr. Cox had three questions. Did you all want to answer any of these?

Mr. SHAYS. Could you quickly just review them very quickly, because I basically concur that you have to have transmission from one State to another. I took the position that this ultimately needed to happen. You need this cable, but do it according to the permitting process.

So I don't want people to think that my objection to this was based on not doing it. Sometimes we will give them energy; sometimes they will give us energy. You need that cross-connection. The problem we had was we think that Cross-Sound Cable attempted to build this cable knowing they couldn't provide—live up to the permit, but then having built it, possession would be nine-tenths of the law. They thought they could just ram it through and ignore the permit process, which was our problem.

Mr. HALL. Mr. King.

Mr. KING. If I could reply to that. My understanding is that Cross-Sound Cable does want to go back in and rectify it, but under the moratorium from Connecticut they are not allowed to.

Mr. HALL. It kind of leaves them in a dilemma.

I think Mr. Radanovich wants to ask a question.

Mr. SHAYS. We just don't want it operated, though, until they meet the permit process. We don't want the process for them to be operating it while this is in dispute.

Ms. DELAURO. I think it is important to note that Cross-Sound has been required to perform an environmental study of the effects of the cable operation. The company must repair the shelf beds adversely impacted by the installation of the cable. The company agreed to take these steps as a condition of receiving the permits, but has yet to complete any of the action. The permits were issued at specific depths and specific requirements, and the company has refused to do that. They just moved forward without doing it, so that they agree to do some things, and then they don't do it.

And a final comment, Mr. Chairman. I would like to say that we need to deal with the energy problem. Long Island has a power generation deficit. It will remain an electricity supporter for the foreseeable future. It is difficult to foresee a situation in which Long Island could become a very meaningful exporter to the State of Connecticut, in my view. So I don't believe that the small benefit that Connecticut does receive, and we do get a very small benefit, that the very serious commercial risks that the cable presents and

the environmental risks that the cable presents to our community are not worth it.

Mr. HALL. Have each of you had an opportunity to express yourself? If so, thank you for your time. You have been great all three of you.

Mr. Radanovich, I am sorry. Mr. Radanovich has asked to be——

Mr. RADANOVICH. If I could have just a brief clarification, Rosa. You may be able to answer the question. I know this sounds like environmentally this is caught up in the energy bill, but what environmental hazards would exist in the laying of the cable across the sound?

Ms. DELAURO. I would just say to you that the way that this was permitted by the Army Corps of Engineers, the State and the Federal permits, there were conditions that were outlined by these bodies. The requirement that the cable be buried 6 feet below the seabed in accordance with the Corps' requirements for harbor navigation, the condition has not been met in several places. So that is—so that is in effect.

So what happens if we bypass that, in taking the position here over one State or another, is we are just going to abrogate what was the law. They agreed to these conditions. And they were also told by—as I said to the Chairman earlier, that there are people who are generational, the fisherman, the harbor pilots, who have come together, and the environmentalists and others, groups that never come together around this, told them they were going to have difficulty. They refused to go back and look at a different way in which to deal with it. They laid it out, and, in fact, we hit bedrock there. So they are not meeting the permitting requirements. That is the problem that I have.

Mr. RADANOVICH. The main issue is the depth of the cable.

Ms. DELAURO. That is my view.

Mr. KING. That only includes 700 feet out of 24 miles. They want to go back in; they want to correct it. This, by the way, is a survey report which was completed just several months ago, which I assume we can make part of the record.

[The report follows:]

**CERA ADVISORY SERVICE**
Electric Transmission

# CERA Alert®

## EFFECT OF CROSS SOUND CABLE

by Hoff Stauffer, Samuel A. Newell, and Gautam Mukherjee

**DATE**
October 24, 2003

### Overview

The Cross Sound Cable (CSC) is a direct current (DC) transmission line from New Haven, Connecticut, to Shoreham on Long Island. It has been and continues to be politically contentious. The Attorney General of Connecticut argues inter alia that the effect of the CSC would be to increase prices to Connecticut ratepayers.

Since wholesale energy prices have been generally higher in Long Island than in Connecticut, it is reasonable to believe that the electricity would flow from Connecticut to Long Island on the CSC, thereby depressing prices in Long Island and increasing prices in Connecticut. Wholesale energy prices would be lower in Long Island because cheaper electricity from Connecticut would displace more expensive generation in Long Island. Prices in Connecticut would be higher because Connecticut would have to generate more to supply Long Island, and this increased generation would result in higher prices because higher-cost generation would be setting the price in Connecticut.

This Alert provides CERA's assessment the effects of the CSC on prices and other measures in Connecticut and Long Island. Our findings can be summarized as follows:

- Wholesale energy prices would decrease in Long Island as expected.
- In Connecticut wholesale energy prices would be minimally affected on average, with higher prices in the summer and lower prices in the winter.
- However, costs would go down in each region.

With the CSC, Connecticut would export to Long Island for the nonwinter months and particularly in the summer. These exports would reduce wholesale energy prices and costs in Long Island. Then, in the winter, Long Island would export to Connecticut some of the time. These exports would decrease wholesale energy prices and costs in Connecticut.

For clients with access to **www.cera.com**, additional features related to this report are available online:

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- Author biographies
- Adobe PDF version of complete report

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## Approach

CERA used its proprietary version of the GE-MAPS electricity markets simulation model to assess the effect of the CSC on prices and other measures in Connecticut and Long Island.

The base case assumptions are those that we are using for all our other current work on transmission congestion and generation asset valuation.

We ran four cases, two each for 2004 and 2005. For each year, one case had the CSC operating, and the other did not.

Then we compared the two cases in both 2004 and 2005 to determine the forecasted effects of the CSC on prices and other measures in both Connecticut and Long Island.

## Findings

The CSC would help both Connecticut and Long Island, although Long Island would be helped the most.

- Wholesale energy prices are forecast to be lower in Long Island and approximately unchanged in Connecticut as a result of the CSC.
- Costs are also forecast to be lower in both Connecticut and Long Island.
- Annual average electricity flows would be from Connecticut to Long Island, but during some hours of the winter, power would flow from Long Island to Connecticut.

### *Wholesale Energy Prices*

With CSC, average wholesale energy prices are forecast to be lower in Long Island in both years and essentially unchanged in Connecticut (see Table 1).

But there are seasonal effects. Prices would be higher in Connecticut in the summer months, but lower in the winter months. Prices would be lower in Long Island in the summer months and slightly lower in the winter months (see Table 2).

These price effects are greater in 2004 than in 2005 because there will be additional efficient generation capacity in Long Island by 2005.

### *Costs*

Costs are defined to be the variable generation costs plus the costs of imports at market prices minus the revenues from exports at market prices. They do not include fixed generation costs, capacity costs, or transmission and distribution costs.

Costs are forecast to be lower in both areas in both years (see Table 3).

Clearly, the CSC would provide for increased economic efficiency.

**Table 1**

**Annual Load-weighted Average Prices**
(dollars per megawatt-hour)

| | Connecticut | | | Long Island | | |
|---|---|---|---|---|---|---|
| | No CSC | CSC | Change | No CSC | CSC | Change |
| 2004 | 32.5 | 32.6 | 0.1 | 38.2 | 36.4 | (1.8) |
| 2005 | 33.1 | 33.1 | 0.0 | 38.4 | 36.9 | (1.4) |

Source: Cambridge Energy Research Associates.

**Table 2**

**Average Prices in June–September**
(dollars per megawatt-hour)

| | Connecticut | | | Long Island | | |
|---|---|---|---|---|---|---|
| | No CSC | CSC | Change | No CSC | CSC | Change |
| 2004 | 34.3 | 34.8 | 0.5 | 48.0 | 43.7 | (4.3) |
| 2005 | 35.6 | 35.8 | 0.2 | 48.5 | 44.8 | (3.7) |

**Average Prices in January–March**

| | Connecticut | | | Long Island | | |
|---|---|---|---|---|---|---|
| | No CSC | CSC | Change | No CSC | CSC | Change |
| 2004 | 33.0 | 32.6 | (0.5) | 32.5 | 32.3 | (0.2) |
| 2005 | 32.8 | 32.7 | (0.1) | 32.7 | 32.6 | 0.0 |

Source: Cambridge Energy Research Associates.

**Table 3**

**Annual Costs**
(million dollars)

| | Connecticut | | | Long Island | | |
|---|---|---|---|---|---|---|
| | No CSC | CSC | Change | No CSC | CSC | Change |
| 2004 | 668 | 667 | (1.3) | 661 | 656 | (4.9) |
| 2005 | 685 | 683 | (2.1) | 687 | 681 | (6.3) |

Source: Cambridge Energy Research Associates.

*Flows*

These seasonal differences are caused by increased flows between Connecticut and Long Island (see Figure 1).

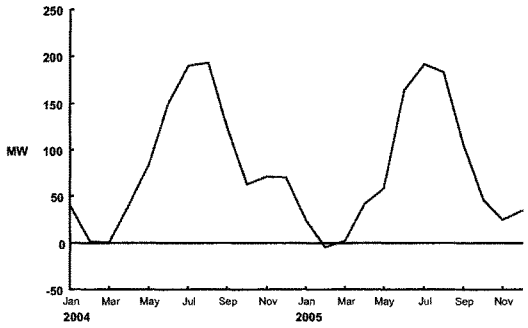
The effect of the CSC is to increase flows from Connecticut to Long Island in the nonwinter. During the winter the average flow is from Connecticut to Long Island, but it is much lower, and power flows both ways. With the CSC more power flows into Connecticut in the several hundred hours with relatively high prices in Connecticut. In these hours Connecticut prices are lower with the CSC (see Figure 2).

## Interpretation

The CSC enables increased flows of energy between Connecticut and Long Island.

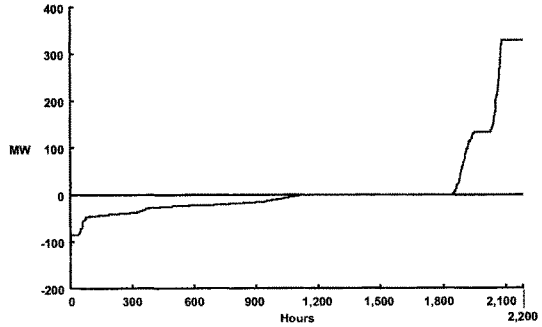
In the nonwinter months, the flows are from Connecticut to Long Island. These flows reduce wholesale energy prices in Long Island and increase them in Connecticut. However, the price decrease in Long Island is greater than the price increase in Connecticut. This is because the cost curve is steeper in Long Island than in Connecticut in the nonwinter months. In the summer there is plenty of gas-fired combined-cycle generation

**Figure 1**
**Monthly Average Flows from Connecticut to Long Island Due to CSC**




Source: Cambridge Energy Research Associates.
31021-2

**Figure 2**
**Flow Duration Curve for Connecticut to Long Island Flows Due to CSC in January–March 2004**




Source: Cambridge Energy Research Associates.
31021-1

capacity available in New England, whereas the marginal generation capacity in Long Island is less efficient, older steam units and peakers.

In the winter months there are several hundred hours when the flows would be from Long Island to Connecticut. These flows reduce prices in Connecticut and have minimal average effect on Long Island. This is because the generation cost curve is steeper in Connecticut than in Long Island in the winter, since the gas-fired capacity in Connecticut is very expensive in the winter, due to high seasonal gas prices. But Long Island has available oil-fired capacity, which is much cheaper than gas-fired capacity in the winter.

In addition, the CSC has additional value for the consumers of both areas. The CSC provides some option or insurance value when it can be used to mitigate unexpected price spikes in either area. Further, it provides additional reliability value for both areas, since it can be used to provide additional capacity in the event of a shortage due to unexpected generator or transmission outages.

## Conclusion

The CSC would reduce costs by enabling more efficient utilization of available generation capacity. This cost measure represents benefits to society as a whole.

Wholesale energy prices would decrease in Long Island. Additional benefits would be available to consumers in both Long Island and Connecticut. ■

Mr. KING. Again, the conclusion was that there has been minimal impact to the living organisms in the Long Island Sound channel.

Mr. RADANOVICH. One more brief question. How deep is the water there where the cable doesn't meet the depth requirement? Do you have any idea?

Ms. DELAURO. It was supposed to go down to 48 feet, leaving a 6-foot safety margin. If we wanted to and—the point I wanted to make was that if New Haven—and New Haven is a port, understand that New Haven is a port. It is not the port of Seattle, and it is not the port—but in terms of business and industry, it is second to Boston in the region. So if New Haven ever wanted to go deeper and dredge, we would have to deal with the cable and removing the cable, et cetera, and significantly more damage to the Long Island Sound and to the port of New Haven.

Mr. KING. Again, I would say this survey will show that there is minimal impact at all on commercial navigation.

Mr. HALL. In fairness to Mr. Rogers and Mr. Otter, do you all have any brief questions that you can't submit for the record?

Mr. SHIMKUS. I don't, Mr. Chairman, thank you.

Ms. DELAURO. Thank you, Mr. Chairman.

Mr. HALL. We thank you very much. We are ready for the second panel.

Mr. HALL. All right. We have a very distinguished group here. We first have the honorable Patrick Wood, Chairman of FERC, longtime successful, generous giver to energy problems of his own State and now to his Nation. We have Honorable Lee Otis, general counsel for the Department of Energy; Richard Blumenthal, attorney general, State of Connecticut; William Museler, president and CEO of New York ISO; Jeff Donahue, who built the project of Cross-Sound Cable Company; Richard Kessel, chairman and CEO of Long Island Power Authority. A very distinguished panel.

At this time we recognize Mr. Wood for 5 minutes. If you can, sir, do it in 5 minutes. We won't hold you to 5 minutes. If you can do it in 4, it will be acceptable.

Mr. WOOD. I think I will try to beat that.

Mr. HALL. Yeah, and 2 minutes of those are gone.

**STATEMENTS OF HON. PATRICK WOOD, III, CHAIRMAN, FEDERAL ENERGY REGULATORY COMMISSION; LEE OTIS, GENERAL COUNSEL, U.S. DEPARTMENT OF ENERGY; RICHARD BLUMENTHAL, ATTORNEY GENERAL, STATE OF CONNECTICUT; WILLIAM J. MUSELER, PRESIDENT AND CEO, NEW YORK ISO; JEFFREY A. DONAHUE, CHAIRMAN AND CEO, CROSS-SOUND CABLE COMPANY, LLC; AND RICHARD KESSEL, CHAIRMAN AND CEO, LONG ISLAND POWER AUTHORITY**

Mr. WOOD. Considering the depth of expertise on the panel, I would like to take a little bit more of a policy angle here, because I do think that is what you all ask us at the Commission to do, is to look at these things from a broader angle.

I have heard Mr. Pickering's concerns about State versus State issues, and, quite frankly, a number of those in a number of different arenas come to our Commission, whether they are on gas

issues or power issues or hydroelectric issues. We are often the arbiter, the Federal arbiter, when States can't work things out. So we do that for a job. It is not always the most enjoyable, but it tends to work.

The statutes that govern this particular issue are a bit different than the typical ones we deal with that have a much clearer line of authority for our Commission. There have been amendments to the Act in 1992, the most recent energy bill, to allow certain types of interconnections. It is different than the authority under which the Secretary of Energy used to energize on an emergency basis this cable. But there are new authorities, one of which is the subject of a pending complaint, with a parallel line across the Long Island Sound between Connecticut and Long Island, which there hasn't been much discussion about today because it is pending before our Commission. I am going to avoid going into it, but some of the other witnesses here today may do that with regard to what are called the 1385 cables.

The New York region, from an electrical and from an energy point of view, and greater New York I am including northern New Jersey, Long Island and southwestern Connecticut, in addition to the city, is the largest, if not the largest, load center in the entire country. It spreads over three large grid operators, the New York ISO, ISO New England and the PJM interconnection.

And the infrastructure needs of that area are so significant, they have, quite frankly, dominated a lot on which we have focused. The harder cases before our Commission on both gas pipeline infrastructure and on electricity deal with about a 70-mile radius from downtown New York, and for that reason we at the Commission are very interested in seeing this problem that is before the committee today be resolved.

I think certainly the encouraging signs we heard from the prior panel might lead us to think that this could indeed be addressed between and among the States. We hope that is the case. Nevertheless, there are Federal authority issues that may well be drawn into play here.

As just a final thought I would like to say that this is an issue that, unlike the natural gas pipeline issue, has an interesting interplay between State and Federal authorities. The gas pipeline side of the Commission has relatively clear authority to do not only the siting and environmental reviews for interstate gas pipelines, but also does the permitting of the rates, terms, and conditions of the pipes.

On the electricity side, by contrast, we can do the rates, terms and conditions of the line, as we did in the year 2000 for this current project, but we do not have the front seat on the environmental and siting issues. That rests, as we have heard, with the States. There is not under current law a Federal court of appeal for that other than the regular State and Federal court process from each of the individual permitting agencies.

The siting provisions in the proposed energy bill would change this and would put the Commission, as it has with other issues, as an arbiter where States do not agree or where Federal and broader regional interests are not addressed. I want to flag that again for the attention of the committee and observe that that is in the en-

ergy bill. I think it would address a number of these type issues should they pop up in the future.

Thank you, and look forward to any questions, Mr. Chairman.

[The prepared statement of Hon. Patrick Wood, III, follows:]

PREPARED STATEMENT OF PAT WOOD, III, CHAIRMAN, FEDERAL ENERGY REGULATORY COMMISSION

I. INTRODUCTION AND SUMMARY

Thank you for the opportunity to testify on the operation of the Cross-Sound Cable (CSC or Cable). The CSC is an underwater direct current 330 megawatt cable system under Long Island Sound. The CSC connects the New England Power Pool (NEPOOL) regional transmission system in Connecticut to the New York Independent Transmission System Operator (NYISO) transmission system on Long Island, New York. Pursuant to orders by the U.S. Secretary of Energy, the CSC has been used at times over the past two years to transmit power between these two regions. However, the Cable is not in operation currently.

I have testified to this Subcommittee before about the critical role that sufficient energy infrastructure plays in both reliability and in ensuring customer benefits. (Failure of infrastructure development to keep up with customer demands certainly played a central role in the California energy market price spike in 2000-2001). The CSC project is the first operational example of entrepreneurial, risk-bearing transmission that the Federal Energy Regulatory Commission (Commission) has sought to encourage in the post-Energy Policy Act of 1992 electric industry. "Merchant" transmission differs from traditional transmission in that its costs are not recovered through regulated rates, but through negotiated arrangements between the transmission line owner and the customer. This is important because the risks of merchant transmission are borne by the project's investors, and not captive ratepayers. In 2000, our Commission ruled on the rates, terms and conditions for transmission service over the Cable, and found that the Cable will enhance competition by expanding capacity and trading opportunities between the New England and New York markets. The Commission also found that the Cable will provide economic benefits to electric customers and producers in both markets while imposing no risk or cost on captive customers in any market. The Cable may also provide reliability benefits, particularly at times of electrical shortages. Today, four years after our Commission authorized rates, terms and conditions for the Cable, and after investors and wholesale transmission customers have made the necessary investments to get it built, the Cable is being taken out of operation.

The Cable provides a classic illustration of the interstate nature of the transmission grid. The planning, construction, and operation of the Cable affect both the regional marketplace and regional reliability. Decisions regarding the operation of the Cable underscore the importance of assessing economic and reliability issues from a regional perspective. Building and operating a transmission line can have economic and reliability consequences that go beyond any single State. Therefore, questions about who should pay for those consequences must, of necessity, be considered in ways that fully protect customers and citizens of the affected States.

II. BACKGROUND

On June 1, 2000, the Commission approved the rates, terms and conditions for transmission service over the Cable (June 1 Order). This was the first time the Commission approved rates, terms and conditions for a merchant transmission project. The June 1 Order contained the findings of economic benefits noted above. The Commission imposed several conditions on its approval. For example, the application included a proposal to hold an "open season" to solicit customers for the Cable, and the Commission imposed conditions to ensure that the open season process was nondiscriminatory, fair and transparent.

In June 2002, the Commission accepted, with modifications, NEPOOL's amendment to its open access transmission tariff to integrate the CSC into the NEPOOL regional transmission system operated and administered by ISO New England (ISO-NE). The Commission said it was "pleased that the parties worked together to meet the challenges facing the development of a new type of entity into the energy market."

Despite the foregoing, and despite the fact that none of the costs of the CSC are being included in captive Connecticut ratepayers' rates, units of the Connecticut government have opposed the operation of the Cable. As a result, the Cable has been operated only when authorized by emergency order of the U.S. Secretary of En-

ergy—from August 1, 2002 to October 1, 2002 (to alleviate the emergency supply situation caused by a heat wave), and from August 14, 2003 to May 7, 2004 (to alleviate the post-Blackout disruptions in electric transmission service, as well as provide valuable voltage support and stabilization services for the electric transmission systems in both New England and New York). The Secretary has issued these orders pursuant to section 202(c) of the Federal Power Act, 16 U.S.C. § 824a(c) (2000) (FPA), and section 301(b) of the Department of Energy Organization Act, 42 U.S.C. § 7151(b) (2000).

I would note that Connecticut and Long Island are interconnected not only by the Cross-Sound Cable but also by a set of electrical cables known as the "1385 Cables." The 1385 Cables have been in use for over 30 years. In recent years, they have experienced increasing operational problems. A pending case before the Commission involves a Connecticut utility's request that the Commission use its authority under section 210 of the FPA to order a New York utility to assist in replacing the 1385 Cables. Among other things, section 210 allows the Commission to issue an order requiring the physical interconnection between two utilities, or such action as may be necessary to make effective any physical interconnection, if, after certain procedures, the Commission determines that such an order is in the public interest and would: "(A) encourage overall conservation of energy or capital, (B) optimize the efficiency of use of facilities and resources, or (C) improve the reliability of any electric utility system—to which the order applies." Since the case is pending, I cannot discuss its merits further at this time.

III. OPERATION OF THE CROSS-SOUND CABLE

Over the past decade, investment in the nation's transmission infrastructure has not kept pace with load growth or with customers' desire for greater competition in wholesale power markets. As a result, transmission congestion and energy price differentials between regions have increased. Construction of appropriate transmission facilities and other measures that make more transmission capacity available to market participants can yield significant benefits in increased competition and improved reliability. Stand-alone, or merchant, transmission companies have proposed several projects to expand capacity between regions such as New England and New York. The Commission has sought to encourage such projects.

In the case of the CSC, the Commission specifically found that the project would provide economic benefits to customers. The U.S. Secretary of Energy has found that, at least in certain circumstances, the operation of the Cable is needed for reliability purposes. This summer could be one of those circumstances. The Cable is fully built and ready for use. Operation of the Cable is supported by one State and opposed by another, each advocating its own parochial interests.

The authority granted to the U.S Secretary of Energy under FPA section 202(c) has been an important tool for responding to emergency circumstances. Legislation has been proposed that, essentially, would codify the Secretary's most recent order requiring operation of the Cable until Congress legislates otherwise. Operation of the Cable would ensure that the regional benefits of the Cable will flow to customers.

Further, it might be a good time to consider expanding the application of section 202(c) to also include orders requiring the operation of existing facilities whenever such operation is found to be in the public interest, not just in the event of an emergency. The view of one State should not be the sole determinant of whether a region's electrical customers receive the economic and reliability benefits of facilities that have already been built. In these narrow circumstances, the protection of interstate commerce may warrant a greater federal role.

This suggestion is related to, but separate from, the issue in the pending energy bill of having a federal backstop for siting of significant new interstate power transmission projects. The same conflict that gave rise to that provision of the pending legislation is present in the Cable case, i.e., while the interconnected electricity grid is interstate in nature, each State has the jurisdictional authority to site new transmission lines needed for the region. Therefore, a federal arbiter is needed when States cannot agree on such issues. The national public interest in reliable supplies of energy for all customers at reasonable prices cannot be ignored.

There is also a bigger real-world issue here. The greater New York City electric power marketplace, which also encompasses Long Island, northern New Jersey and southwestern Connecticut, is among the largest load centers in the country. The planning and operation of that regional power grid falls under the management of three separate grid organizations—the NYISO, ISO-NE, and the PJM Interconnection. This split requires a continuous, rigorous coordination effort on many levels—reliability, planning, markets, and fuels. To this end, the Commission is holding an-

other in its series of regional infrastructure conferences on June 3, 2004, to explore the adequacy and development of electric, natural gas, and other energy infrastructure in the Northeast, including New York and New England. I expect that many of the issues addressed in this hearing, plus others from the natural gas industry, will be raised in the day-long conference, which my colleagues and I will lead. I will report on what we hear to this Subcommittee shortly thereafter.

As always, my colleagues, I and our staff are always available to assist the Subcommittee in any way we can.

Mr. HALL. Thank you.

Chair recognizes Ms. Otis for 5 minutes.

**STATEMENT OF LEE OTIS**

Ms. OTIS. Thank you, Mr. Chairman and distinguished members of the committee. I would like to review very briefly the sequence of events that led to the Secretary's issuance of the various emergency orders under section 202 and his recent decision on May 7 to declare the emergency ended.

As everyone knows, on August 14, the Northeast United States and Canada experienced the worst blackout that has ever occurred in North America, and as a result of that, within hours of the blackout, the Secretary of Energy issued his original order after consultation with the various interested parties, energizing the Cross-Sound Cable. On August 28, after reviewing the circumstances, he concluded that because the cause of the blackout had not yet been ascertained, an emergency continued to exist, and, therefore, that he would keep the cable operational until further order.

After the task force on the blackout, the multinational task force, completed its investigation into the causes of the blackout and concluded in early April that the causes were not related to the absence of the cable or to its not being in operation. The Secretary determined on May 7 that no emergency existed, and, therefore, he ended his original order.

What that points to is the core of what the Secretary's powers are under section 202(c) of the Federal Power Act, which is that the Federal Power Act authorizes the Secretary to act if he determines that an emergency exists, and to require by order a temporary connection of facilities and delivery interchange or transmission of electric energy as in his judgment will best meet the emergency and serve the public interest. This authority reserves considerable judgment to the Secretary, but is limited to situations in which the Secretary has determined that an emergency exists. He cannot order the activation or connection of a transmission facility in the absence of an emergency even if he believes the line is important to reliability.

On the other hand, the Act does not define exactly what an emergency is. It gives some examples, such as sudden increase in the demand for electric energy or shortage of electric energy facilities for the generation or transmission of electric energy, but it does not define it.

As the Secretary stated in his May 7 order, the Department of Energy believes that the Cross-Sound Cable is an important transmission asset, and that it contributes to the reliability of the electric transmission grid in New England and New York. However, as I noted, his authority under section 202(c) is not a broad authority

to order operation of the cable whenever he thinks it will advance reliability, but is limited to situations where he determines that an emergency exists.

Finally, the Department of Energy has stated numerous times that existing law is not sufficient to protect electric reliability and to promote the construction and operation of needed electric transmission facilities. Therefore, the administration strongly supports the electricity provisions in Title 12 of the H.R. 6 conference report.

In conclusion, the Secretary has not hesitated to use the section 202(c) authority when presented with information that warrants the finding that an emergency exists. He has issued 202(c) orders concerning the Cross-Sound Cable on several occasions in the past. He stands ready to do so again in the future if, in his judgment, it is shown that an emergency exists.

We will continue to monitor reliability and the transmission situation in the Northeast and elsewhere in the country. Any person is invited to bring to the Department's attention at any time data or information that the person believes show that an emergency exists and that a 202(c) order would meet the emergency and be in the public interest. Thank you for allowing me to testify.

[The prepared statement of Lee Otis follows:]

PREPARED STATEMENT OF LEE LIBERMAN OTIS, GENERAL COUNSEL, U.S. DEPARTMENT OF ENERGY

Mr. Chairman and Members of the Subcommittee, thank you for inviting me to testify concerning the Secretary of Energy's recent orders concerning the Cross-Sound Cable and the effect of the Cable's operation on reliability.

On May 7, 2004, Secretary Abraham issued Order No. 202-03-4, in which he determined that the emergency giving rise to his earlier orders authorizing use of the Cable had ceased to exist, and that no other emergency had been demonstrated justifying continued authorization to use the Cable. The May 7 order briefly recounts the events leading up to it, but I will summarize them here, and also will summarize the legal authority that the Secretary used to issue his Cross-Sound Cable orders.

Section 202(c) of the Federal Power Act gives the Secretary of Energy the authority to determine that an "emergency" exists, and "to require by order such temporary connection of facilities and such generation, delivery, interchange, or transmission of electric energy as in [the Secretary's] judgment will best meet the emergency and serve the public interest." It is this authority that Secretary Abraham has used when he has directed operation of the Cross-Sound Cable.

By its terms, this section of the Federal Power Act is limited to situations in which the Secretary has determined an "emergency" exists. However, neither the Act nor DOE's regulations define exactly what an "emergency" is. The Act does state that an emergency can exist because of "a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes," but it leaves to the Secretary's judgment exactly what set of facts and circumstances might constitute an emergency, as well as the determination of whether to issue an order under section 202(c) and what terms of such an order might "best meet the emergency and serve the public interest."

On August 14, 2003, the United States and Canada experienced the largest electric transmission grid failure and blackout that has ever occurred in North America. That same day, in order to alleviate the emergency situation presented by the blackout, the Secretary exercised his authority under Federal Power Act section 202(c) and issued Order No. 202-03-1, which authorized operation of the Cross-Sound Cable. The Secretary issued that order after DOE officials had consulted with the independent system operators in both New England and New York, as well as officials at the North American Electric Reliability Council, electric utilities in both Connecticut and New York, and the owner of the Cross-Sound Cable.

The next day, President Bush and Canadian Prime Minister Chretien announced the creation of a bi-national task force to investigate the causes of the blackout and

why spread, as well as to formulate recommendations about what might be done to prevent blackouts from occurring in the future.

The task force immediately commenced its investigative work, but because of the immense amount of data and information that needed to be analyzed and the extensive investigative work that was necessary, it was not possible to reach an immediate conclusion as to what had caused the blackout or why it spread. Therefore, on August 28, 2003, and even though electric service had been restored in the area affected by the August 14 blackout, Secretary Abraham issued an order finding the continued existence of an emergency, and determining that operation of the Cross-Sound Cable should continue to be authorized until such time as he issued an order determining that the emergency had ended.

The next day, August 29, 2003, State officials from Connecticut filed papers with DOE seeking rehearing of the August 28 order and asking that DOE stay the operation of the order pending judicial action. Several days later, the Secretary issued an order calling for the submission of briefs and information with respect both to the rehearing request and the stay request, and establishing a schedule for the submission of that information. His order identified a publicly-accessible DOE website address at which all materials submitted to DOE would be made available.

In response, numerous persons, including Members of Congress, submitted letters, data and information to DOE concerning the Cross-Sound Cable and its operation. All of these submissions were made publicly available, and the public was given the opportunity to comment on the submissions made by other persons.

At the same time, the work of the bi-national task force investigating the August 14 blackout was proceeding. The task force issued an interim report in November 2003 that set forth tentative conclusions concerning how the blackout began and why it spread to certain parts of the United States and Canada. The interim report called for public comment concerning all aspects of the report, and public meetings were held in both the United States and Canada concerning the interim report. The task force also invited the submission of written comments and recommendations, which were made publicly available.

In early April 2004, the bi-national task force issued its final report. That report identified the direct causes and contributing factors for the August 14 blackout. The report states that the blackout began in Ohio, and describes in detail the sequence of events leading up to the blackout, and that occurred as the blackout spread across an area encompassing 50 million people.

The Cross-Sound Cable was not in operation on August 14, 2003, and the final report did not identify any effect that the non-operation of the Cable had either on the initiation of the blackout, or on its spread. The final report simply does not identify any particular role that the Cable would have played in preventing or stopping the spread of the outage, had it been in service on August 14, 2003.

After issuance of that final report, DOE considered the contents of the report as well as DOE's earlier analysis of the data and information that had been submitted in response to the Secretary's call for information concerning the operation of the Cable. DOE also made its own inquiries of the relevant Independent System Operators to assess the power supply and transmission situation in the vicinity of the Cross-Sound Cable.

In light of the reasons for and the terms of the August 28 order, and the data and information submitted to and developed by DOE, the Secretary determined that the emergency identified in his August 28 order no longer existed. That order had authorized continued operation of the Cable based on the finding that an emergency continued to exist because "it has not yet been authoritatively determined what happened on August 14 to cause the transmission system to fail resulting in the power outage, or why the system was not able to stop the spread of the outage." Once those facts were determined, as they were in the task force's final report, and because that report did not point to any role the Cable did or could have played in connection with the cause or the spread of the blackout, the Secretary determined that the emergency he earlier had identified no longer existed. He furthermore concluded that the information that the public had submitted to him, as well as the investigation conducted by DOE itself, did not demonstrate the existence of any other present emergency warranting continued authorization to operate the Cable under the authority of Federal Power Act section 202(c). Therefore, he found that the emergency he had identified earlier ceased to exist, and he terminated the Federal Power Act section 202(c) authorization to operate the Cable.

As the Secretary stated in his May 7 order, DOE believes the Cross-Sound Cable is an important transmission asset and contributes to the reliability of the electric transmission grid in New England and New York. In fact, the Cable was mentioned in the report of the National Energy Policy Development Group, in May 2001, as an important transmission asset, the operation of which had been blocked because

the State of Connecticut did not recognize the importance of the facility to the interstate grid.

It is important to remember that under present law, however, section 202(c) does not authorize DOE to direct operation of a transmission facility simply because the facility is important to the grid, promotes commerce or improves reliability. Instead, the law requires the Secretary to find that "an emergency exists" before he can invoke his authority to issue a 202(c) order. Therefore, this section of the law was not intended to be a replacement for the resource adequacy and transmission facility siting responsibilities carried out by other governmental and private bodies.

Because the Administration believes that existing law is not sufficient to adequately protect electric reliability and to promote the construction and operation of needed electric transmission facilities, the Administration strongly supports the electricity provisions contained in Title XII of the H.R. 6 Conference Report, which the House approved several months ago. The bi-national blackout task force stated that the single most important thing that could be done to prevent future blackouts and reduce the scope of any that do occur is for Congress to enact the reliability provisions in H.R. 6 and make compliance with reliability standards mandatory and enforceable. The Administration also supports repeal of the Public Utility Holding Company Act and supports last-resort Federal siting authority for high-priority transmission lines—both of those provisions would encourage investment in needed transmission and generation facilities.

Finally, I want to emphasize that although there are obvious limits to the circumstances in which the Secretary can issue an order under Federal Power Act section 202(c), Secretary Abraham has not hesitated to use that authority when presented with data and information that, in his judgment, warrant a finding that an "emergency" exists. He issued an order directing operation of the Cross-Sound Cable only hours after the August 14, 2003 blackout occurred, and continued the directive to operate the Cable until it had been determined what happened on August 14 to cause the blackout and why the system was not able to stop the spread of the outage. He also issued an order on August 16, 2002, directing operation of the Cross-Sound Cable, because it had been demonstrated that an emergency existed as a result of imminent shortages of electric energy on Long Island.

The Department continues to monitor the reliability and transmission situation in the Northeast and elsewhere in the country. Any person is invited to bring to DOE's attention, at any time, data or information that the person believes demonstrates an emergency exists and that the Secretary should exercise his section 202(c) authority. The Secretary stands ready to exercise that authority, with respect to the Cross-Sound Cable or any other situation or facility, if presented with facts that demonstrate an emergency exists, and that a 202(c) order would alleviate the emergency and would be in the public interest.

Thank you again for inviting me to testify today. I would be glad to answer any questions.

Mr. HALL. Mr. Blumenthal.

**STATEMENT OF RICHARD BLUMENTHAL**

Mr. BLUMENTHAL. Thank you, Mr. Chairman. And thank you for this opportunity to be with you today, and I look forward to answering any questions you have. I would submit for the record the full statement that I have prepared and simply very briefly, taking to heart the admonition that you have given to other speakers, very briefly.

Mr. HALL. Fine. All of your statements will be accepted and put into the record. Without objection.

Mr. BLUMENTHAL. I want to make at the outset a very important general point, which is that New York and Connecticut by and large cooperate, in fact work very, very closely together, on law enforcement, energy needs. And this dispute, if I may characterize it as such, is a real exception to that general pattern of cooperation. I hope there will be regional cooperation, specific steps toward constructive discussions and consensus that will enable us to avoid the continuing pattern of confrontation. But it must be the result of consensus among the States, not confrontation or conflict or over-

riding and riding roughshod over legitimate States rights and sovereign concerns.

I just want to make the point that some have made this morning that these two States should be given the opportunity to resolve among themselves, without the Federal Government riding roughshod over their rights, the differences that they have now. And in my view, there should be a streamlining of our energy system, not steamrolling over States rights.

We have supported in Connecticut 1385 lines, upgrading and even expanding them, which go between Norwalk and Northport. We have expanded our 345 kV lines that provide for greater transmission in Connecticut. We built 2,000 megawatts of additional generating power in Connecticut to fulfill our needs, and we have done our job in fulfilling our responsibility.

This line is not economically neutral. It is skewed very unfairly in favor of Long Island. The amount that Connecticut consumers have to pay additionally is what Long Island officials have said they will save. So there is rough agreement on what the economic effect is. It is all skewed toward Long Island, as has been the flow of power in the last 9 months when the emergency order operated the cable; 99 percent of the power has flowed to Long Island. And the voltage stabilization benefits that supposedly accrued to Connecticut could have been obtained through other sources. They were not necessary as a result of this cable.

So, in my view, there are real fairness issues here, and those fairness issues should be addressed in any system that transmits power within a region and among States. And I think that is the challenge for this committee and this Congress.

Now, I want to make one very stark, simple point: This cable is illegal. My job as attorney general is to enforce the law. We have very strong bipartisan, unified opposition to this cable in the State of Connecticut on those consumer issues, environmental concerns, but essentially my job is to make sure the law is followed. And this cable is illegal because it is not buried according to conditions that were set by the State of Connecticut and by two Federal agencies; not just the United States Corps of Engineers, but also the United States Marine Fisheries Agency. And there are real impacts to potentially violating the law in navigation and shipping into New Haven, but there are also broader ramifications in rewarding lawbreakers. And that is what this Congress may do if it creates a special exception for this cable that circumvents permit conditions that were imposed by Federal and State agencies.

The letters that you have been given previously do not in any way waive those permit conditions. In fact, the quotes were taken selectively from the letters. If you read them in their entirety, you will see that both State and Federal agencies continue to insist on those permit conditions.

And I would just close by saying that we have a common challenge, and we ought to work together to meet that challenge in a way that serves the interest of fairness and national security, but preserves State sovereignty and rights to determine our own destinies, protect our consumers, our environment and navigation. Thank you, Mr. Chairman.

[The prepared statement of Richard Blumenthal follows:]

PREPARED STATEMENT OF RICHARD BLUMENTHAL, CONNECTICUT ATTORNEY GENERAL

I appreciate the opportunity to speak on the topic of "Regional Energy Reliability and Security: Department of Energy Authority to Energize the Cross Sound Cable." The Subcommittee's interest in the critical issues of energy reliability and security is timely and appropriate.

The Cross-Sound Cable, along with a panoply of other proposed cables and pipelines, threatens to divide us and endanger vital common interests. These pet projects of major energy companies, if spared careful long-range planning and vigorous scrutiny, may wreak havoc in Long Island Sound. We must seek regional cooperation—not confrontation and conflict. We share critical environmental and consumer values, much as we share Long Island Sound, a precious and precarious natural treasure.

Connecticut has been willing to assist Long Island in addressing its electricity shortfalls. We have actively sought to upgrade the existing 1385 cable from Norwalk to Northport in order to stop damaging pollution caused by the present damaged oil-leaking cable. This upgrade will significantly increase the amount of electricity available to Long Island from this cable line. We are also building a 345 KV transmission from Bethel, Connecticut on the border of New York to Norwalk, Connecticut, the site of the 1385 cable. Finally, the Connecticut Siting Council and the Connecticut Department of Environmental Protection approved permits for the Cross-Sound Cable, provided it met strict safety and environmental protection standards.

This subcommittee should work to develop legislation that encourages public officials to build consensus and to jointly and fairly share the burdens and benefits of siting efficient and environmentally-sound generating and transmission facilities. It should not support hasty, ill-considered suggestions to jettison a carefully crafted and well established state-federal permitting program that has worked effectively for decades.

Regional cooperation and long-range planning to provide safe, efficient and reliable electric power is obviously a desirable goal, which I fully support. Three core conditions are essential to any regional plan or system:

1. The plan must recognize that states are best positioned and equipped to evaluate and assess all of the environmental and economic impacts of specific projects.

2. Insofar as a plan imposes direct or indirect costs on ratepayers in one state to help support reliability elsewhere, the benefits of the plan should be shared by ratepayers in both states. The system must be totally transparent and accountable to the states, not just federal regulators. Indeed state consent and advice must be at its core. Consensus is a key precondition, achieved by state agreement and support, not federal edict or preemption.

3. Any plan must respect the fact that states own—indeed, actually hold legal title to—the seabed of Long Island Sound in a public trust, as they have since the founding of the Republic. This public trust means that the federal and state governments must seek to minimize or eliminate environmental disruption or damage.

The Cross Sound Cable, unfortunately, has so far failed to meet any of these three core conditions. It poses real dangers to Long Island Sound and to economically critical shipping and navigation. It effectively robs Connecticut ratepayers to subsidize Long Island's failure to plan and meet its energy needs, and it attempts to wrest legal control of the Connecticut seabed away from its protection as a "public trust" under state and federal law.

In fact, the Cross-Sound Cable, in its present state, suffers from numerous critical flaws, including the following:

- It creates a serious and substantial hazard to economically critical shipping and navigation.
- It poses a severe threat to the environment by the need to blast the seabed in order to place the cable at the federally required depth.
- It is patently illegal.
- It costs Connecticut ratepayers millions of dollars to unfairly subsidize Long Island ratepayers and the cable owners.
- It undermines incentives for Long Island to meet its obvious and growing energy needs, while Connecticut is taking the tough steps needed for safe and reliable electric supply.
- It provides negligible reliability benefits to Connecticut.

Shipping and navigation in New Haven Harbor is critical to Connecticut's economy. About 75% of our critical supplies of gasoline and fuel oil arrive by this route. In 2002, the United States Army Corps of Engineers (Army Corps) approved the first ever longitudinal laying of cable in a navigational channel—in the center of New Haven Harbor's federal navigation channel only after Cross-Sound agreed to

a number of conditions. The conditions were to mitigate the possibility that a ship might accidentally drop an anchor onto the cable—such incidents have occurred many times in Long Island Sound, some disastrously—or some other navigational accident. The Army Corps, therefore, ordered the cable sunk a minimum of 6 feet below the Long Island Sound seabed, a depth that Cross-Sound accepted as both feasible and appropriate. This depth requirement is not arbitrary. It is needed to ensure navigational safety in the most important energy supply port in the region. In an emergency, a large tanker needs to quickly reduce speed by dropping its anchor, which drags on the seabed floor for several hundred yards. If the anchor snags the cable, it may damage the tanker or alter its course, in addition to severing or disabling the cable.

Following this determination of the Army Corps, the Connecticut Department of Environmental Protection, acting under state and federal law, approved a permit allowing the construction of the cable as long as the construction was consistent with the Army Corps six foot depth requirement.

Cross-Sound, after agreeing to meet this important safety condition, failed to do so, claiming that unanticipated obstructions prevented its compliance with the permit requirement. These supposed unanticipated obstructions included bedrock ledge—well and widely known for many years. In fact, in 2000, an Army Corps official had specifically warned that, "It's also likely that the applicant would encounter ledge just below certain reaches of the channel." In other words, the supposed unanticipated obstructions were known and willfully disregarded.

Connecticut refused to issue a permit to operate the cable because it failed to meet the federal safety standard. Connecticut's Department of Environmental Protection has treated Cross-Sound Cable like any other applicant that fails to meet permit conditions required to safeguard the environment and public safety. Despite Cross-Sound's efforts, the Army Corps has steadfastly refused to weaken the 6 foot requirement.

Turning to the second problem—environmental damage—the company concedes that the only way to bury the cable to a safe depth in the harbor would be by blasting the bed of the Sound, drilling holes in the bedrock, filling them with explosives such as dynamite or ammonium nitrate fuel oil and detonating it. In addition, the National Marine Fisheries Service has required as part of its permit for the Cross-Sound Cable that such cable be buried at least 4 feet below the sea floor in order to minimize adverse impacts to essential fish habitat. The cable does not currently meet this requirement.

As to the illegality of the cable, the violation is clear. The relevant Federal law " section 404 of the Clean Water Act " appropriately gives Connecticut the legal authority to protect its coastal waters by setting conditions before issuing permits for cable construction. As I have explained, Cross-Sound agreed to and then failed to meet a critical condition " burial at least six feet under the seafloor.

Under the Federal Power Act, the Secretary of Energy has the legal authority to override this law, but only in a genuine emergency. In the past, when the Secretary has invoked this power briefly in a genuine emergency, I have not opposed it. Unfortunately, after the August, 2003 blackout ended, Secretary Abraham attempted to use it as an excuse to order the indefinite routine operation of the Cross-Sound Cable. He did so knowing that the cause of the blackout related to the Midwest power grid, and that no evidence has ever existed that the presence or absence of the Cross-Sound cable connection had anything to do with the blackout. Only after I challenged his order in court, and only days before I was scheduled to seek a stay of his order from the Second Circuit Court of Appeals, did Secretary Abraham rescind his illegal and unjustified order, effectively conceding its illegality.

The evidence is also painfully clear regarding the economic damage the Cross-Sound cable inflicts on Connecticut ratepayers. Routine commercial use of this cable costs Connecticut consumers an estimated $36 million annually, due to the increase in the clearing price of electricity delivered into Connecticut caused by the retransmission of electricity from Connecticut to Long Island over the Cross-Sound cable. Long Island's power generation costs are generally higher that those in Connecticut. Electricity generally flows to the highest priced area. In this instance, cheaper Connecticut power will flow through the cable to Long Island, increasing demand and pushing up the state's electrical rates. As demand rises, power is sought from less efficient plants, called peaking plants, that generate electricity only when the need for power is at its height. Those plants are generally the most expensive to operate, thereby accelerating the upward pressure on prices in Connecticut. Even worse, some of the peaking plants are among the worst polluters, inflicting further damage on Connecticut citizens. Our experience to date fully supports these concerns. While the Cross-Sound Cable was operating, 99% of all transmitted electricity flowed from

Connecticut to Long Island. Future forecasts of energy needs show that this pattern will continue.

The economic impact on Connecticut is even more unfair because Long Island's current power deficit is entirely of its own making. LIPA has failed to develop and build new generating and transmission facilities—not one major plant in more than 10 years—or develop any long term plans. LIPA admitted that it seeks to increase power transmission to Long Island in order to avoid building needed generators on Long Island. LIPA looks to everyone else to site its power plants—a classic NIMBY approach.

Astonishingly, as Connecticut seeks to upgrade the Norwalk to Northport cable and thereby increase the amount of electricity available to Long Island on an emergency basis, LIPA has refused to pay for its share of the upgrade. As a condition for payment, LIPA insists that this cable be used for routine electricity supply for Long Island, exacerbating the reliability problems that already exist in southwestern Connecticut. Upgrading the Norwalk to Northport cable is essential to stop its leaking of chemicals into the Sound and to repair its severed sections, assuring that it can operate at full capacity when necessary. We have supported replacing and upgrading this vital link. LIPA has shunned its responsibility to do the same.

In contrast to LIPA, the State of Connecticut has recently developed more than 2,000 megawatts of additional electrical power and is upgrading approximately one hundred miles of transmission lines to more efficiently move electricity throughout the state. The idea that Connecticut ratepayers should be effectively compelled to subsidize LIPA's arrogant improvidence is completely unacceptable, even outrageous.

Finally, in spite of all the sound and fury, the sad truth is that while use of the cable would save money for New York at Connecticut's expense, it would not significantly improve Connecticut's power reliability. After months of careful study, the Connecticut Siting Council found that it would enhance electricity reliability in Connecticut by less than two-tenths of one percent, an utterly negligible change. No one has ever seriously contested this figure.

Recent claims that the cable has been repeatedly used to provide necessary "voltage stabilization" to Connecticut are also completely misleading. In fact, voltage stabilization is available to Connecticut from numerous generators and substations. The Cross-Sound cable adds no appreciable reliability for voltage stabilization to other presently existing sources in Connecticut. Voltage stabilization was amply available before Cross-Sound and remains sufficient after its shut-down.

No one disputes the Secretary of Energy's existing legal authority to act quickly in a real emergency to prevent a blackout on Long Island. In fact, Cross Sound seeks to operate the cable routinely, moving electric voltage to Long Island and money to itself. It offers no answer to Long Island's self-inflicted problems.

Congress should learn from our experience with the Cross-Sound Cable and enact common-sense energy policies that would require public officials to build consensus and jointly and fairly share the burdens and benefits of siting efficient and environmentally sound generating and transmission facilities.

Mr. HALL. Thank you, sir.

The Chair recognizes at this time Bill Museler, president and CEO. Recognize you for 5 minutes, sir.

## STATEMENT OF WILLIAM J. MUSELER

Mr. MUSELER. Thank you, Mr. Chairman. I am the president of the New York Independent System Operator. Our job is to maintain the reliability of the power system in New York State and also operate the electricity markets in New York State. In a prior life I was vice president of electric operations of Long Island Lighting Company, so I am very familiar with the electric system on Long Island as well as the statewide New York system.

It is very appropriate for Congress to be taking up this matter. As was discussed earlier, electric reliability legislation is before the Congress in several forms. It is urgent that the Congress act on the reliability portions of that legislation. Since 1985—excuse me, since 1965, the vast majority of blackouts in this country have been caused by utilities not following voluntary liability rules. The single

most important action that is required from a reliability standpoint nationally is making those rules mandatory with penalties for noncompliance.

With respect to the Cross-Sound Cable, I would like to mention just a few of the things that make that cable extremely valuable. No. 1, while the cable by itself would not have prevented the blackout of August 14 had that cable been in operation, since it is a DC facility, it would have speeded up the restoration of power on Long Island and presumably helped New York City come back faster as well because that line would most likely have stayed energized.

In upstate New York, the Hydro Quebec DC line formed one-third of the capacity we needed to bring the State back and reenergize the transmission system.

Long Island, as Mr. Kessel will likely confirm, is right on the edge this summer because of capacity. Its locality requirements for electrical capacity are higher without the cable available for emergency transfers. It will very likely be shortened next year unless they are able to get more capacity built very, very quickly.

The cable provides for emergency transfers of power in both directions. It also provides additional economic transactions, both ways, benefiting consumers in both States, as does the AC system that connects both States. It expands the Northeast markets. For reliability and for economic reasons, the Cross-Sound Cable is a two-way street.

Finally, the transmission infrastructure in the country is in dire need of upgrading. If projects like the Cross-Sound Cable cannot be sited and used, we are headed for lower reliability at a time when our economy needs the exact opposite: better reliability.

Thank you very much for the opportunity to present these views of the New York ISO.

[The prepared statement of William J. Museler follows:]

PREPARED STATEMENT OF WILLIAM J. MUSELER, PRESIDENT AND CEO, NEW YORK INDEPENDENT SYSTEM OPERATOR

Good afternoon, ladies and gentlemen. My name is William J. Museler, and I am the President and Chief Executive Officer of the New York Independent System Operator, or NYISO. I appreciate the opportunity to brief the Committee on our understanding of the impacts on New York State and Long Island of the Department of Energy's ("DOE's") rescission of its emergency order authorizing the operation of the Cross-Sound Cable. In the short time available since that rescission, we have begun to analyze those impacts and, in this testimony, I am happy to present our tentative conclusions.

Immediately prior to coming to the NYISO, I was the Executive Vice President of the Transmission/Power Supply Group of the Tennessee Valley Authority, which in terms of megawatts ("MW") served, is the size of New York. Prior to that, I was Vice President of Electric Operations at Long Island Lighting Company. While serving as Vice President of Electric Operations at Long Island Lighting Company, I acquired familiarity with the electric system now operated by Long Island Power Authority ("LIPA") and its contractor, Keyspan. I currently also serve as the Chairman of the ISO/RTO Council, and have served on the North American Reliability Council ("NERC") Board of Trustees and as Chairman of the Southeast Electric Reliability Council. I am a graduate of Pratt Institute in Brooklyn, New York and Worcester Polytechnic Institute. I am a native New Yorker, born in Manhattan and raised in College Point, Queens.

The NYISO was created to operate New York's bulk transmission system and administer the State's wholesale electricity markets. We are a New York not-for-profit corporation that started operation in 1999. We are not a governmental entity, but we are pervasively regulated by the Federal Energy Regulatory Commission ("FERC"). With respect to certain financing authority, the Federal Power Act and

New York law provide that we are regulated by the New York State Public Service Commission.

I will not address environmental or legal issues related to the operation of the Cross-Sound Cable. Those issues are well beyond the appropriate scope of the NYISO's responsibility and beyond my own expertise. Before addressing the operational and reliability issues under consideration this morning, I would like to observe that it is entirely appropriate for Congress to focus immediate attention on issues of electric reliability. Last summer, we suffered a major blackout that threatened the economies of the region and the health, safety and welfare of 50 million people in the Northeast, the Midwest and parts of Canada. The international task force that investigated the blackout determined that it was caused by a company in the Midwest that ignored well accepted, but voluntary, reliability standards. Because the Country's electric system is interconnected across state lines, only the federal government can address this problem effectively. There is legislation before you in several forms that would make compliance with electric utility industry reliability standards mandatory. I urge you to enact such legislation promptly, lest another blackout provide still another object lesson for all of us.

I would now like to discuss the significance of the Cross-Sound Cable to New York and New England. Southeastern New York State is among the most congested locations in the United States in terms of electric transmission. Long Island is a densely populated area immediately to the east of New York City. Because it is an island, it presents unusual obstacles to constructing additional electric transmission. Transmission paths to Long Island must either go through New York City, which presents extraordinary technical difficulties and involves huge expense, or they must go under the Atlantic Ocean or Long Island Sound.

The Cross-Sound Cable is one of only two underwater cables connecting Long Island to Connecticut. Two other cables connect Long Island to Westchester County. The Cross-Sound Cable is a direct current, or DC, "merchant" transmission facility. Rather than being owned by regulated electric utilities, merchant transmission facilities are owned by independent, lightly regulated, entrepreneurial companies. Unlike most transmission lines, the DC characteristics of the Cross-Sound Cable permit its operator to regulate the flow of electric energy over the Cable. When operational, the Cross-Sound Cable could provide up to 23% of Long Island's summer import capability. Its existence also provides Connecticut with access to "quick start" combustion turbine capacity during reserve deficiency conditions. For both New York and New England, the Cross-Sound Cable is a two way street with respect both to reliability and economics.

The adequacy of transmission capacity has both economic and reliability consequences for the areas affected. The most immediate issue, of course, is the reliability of electric supply. Insufficient transmission capacity can have reliability consequences for Long Island, Connecticut and the broader New York and New England regions.

In New York, the amount of generating and other resources necessary for the State and its localities to maintain reliability must be calculated in accordance with criteria imposed by the Northeast Power Coordinating Council and the New York State Reliability Council. Prior to the DOE's rescission of its Emergency Order, the NYISO had determined that 5008 MW of generating capacity had to be physically available on Long Island to satisfy reliability criteria.

The calculations assumed that the Cross-Sound Cable would be available immediately in the event of an emergency. If the Cable is not available this summer, Long Island would require additional generating capacity physically located on the Island in order to maintain the same level of reliability that existed when the Cross-Sound Cable was still in operation. Therefore, unless Long Island successfully procures additional generation for the summer, it will have a higher-than-expected risk of outages without the Cross-Sound Cable. We understand that LIPA is trying to do just that but, since LIPA is represented here today, it is more appropriate that they be the ones to describe such efforts.

The Cross-Sound Cable is also available to assist Connecticut and New England for reliability purposes under emergency conditions. While New England has added more generating capacity in recent years than New York, it periodically requires imports from New York to serve its own electrical load. For example, at times last winter there was not enough natural gas available for some power plants in New England to operate. Fortunately, New England was able to draw upon generating capacity in New York to meet its needs through interties connecting the two regions. The Cross-Sound Cable provides an additional path for imports from New York into New England. In short, an important reason that regions are electrically interconnected to begin with is to buttress one another's reliability at lower cost than to achieve equivalent reliability independently of one another.

For the NYISO, and other entities responsible for planning to meet accepted reliability requirements, the present uncertainty regarding the Cross-Sound Cable presents a serious problem. The Cable exists, but we don't know whether to assume that it can be operated. Absent Congressional action resolving the controversy over the Cable's operation, the New

York and New England regions will continue to face uncertainty about the availability of the cable's transmission capacity for normal and emergency conditions. This uncertainty is more than a mere inconvenience. It can cause needless expense and inefficiency. Electric generation and transmission facilities take many years to plan, finance, license and construct. Continued uncertainty can either result in deferral of such planning and implementation or, even worse, unnecessary construction, if the planners are unable to await a final resolution and then guess wrong about the outcome of the controversy.

In the face of what we hope is only near term uncertainty, the NYISO is planning to explore interim measures to gain access to the Cross Sound Cable's capacity under emergency conditions. The NYISO will confer with the DOE and ISO-NE to attempt to develop a standby procedure that would permit immediate operation of the cable in the event an emergency develops. While the DOE has been extremely responsive in past emergencies, the problem is that emergencies can develop in a matter of seconds or minutes, leaving insufficient time to contact DOE, explain the situation, permit DOE to verify the problem and issue an order in time to make a difference.

Because of the obviously pressing nature of the reliability concerns, I have not focused today on the economic benefits of inter-regional markets and the benefits of additional transmission capacity to support cross boundary transactions. The ultimate purpose of the federal policy of restructuring the electric industry was and is to provide electric consumers with the benefits of open market competition. I would be remiss, therefore, in concluding without noting that FERC's extensive efforts to expand the regional and inter-regional scope of wholesale electricity markets is dependent on the adequacy of inter-regional transmission facilities such as the Cross-Sound Cable. We support FERC's policies and believe that expanded regional electricity markets will maximize the benefits of electric restructuring for consumers.

Finally, I appreciate the attention the Congress has given to this matter. It relates to an essential element of interstate commerce and only the federal government can resolve these issues in an adequate and timely manner.

Mr. HALL. Thank you very much.

We recognize Mr. Donahue, 5 minutes.

**STATEMENT OF JEFFREY A. DONAHUE**

Mr. DONAHUE. Thank you, Mr. Chairman and members of the subcommittee. Thank you for the opportunity to speak with you today.

While the Cross-Sound Cable has been the subject of considerable controversy over the last couple years, one point cannot be disputed: the Cross-Sound Cable is the first major interstate electric transmission project built in the Northeast in the last decade. For better or worse, the Cross-Sound Cable has been used as a poster child for many purposes: first, as the first market-based transmission link in the United States; as the first application in the U.S. of advanced high-voltage, direct-current transmission technology and advanced underground cables; and, perhaps most widely, as a symbol of what is wrong with our Nation's framework for siting electric infrastructure.

My testimony today will seek to provide the subcommittee with the facts regarding some important points that you have heard earlier today. Specifically, my testimony will focus on three key points: the operation of the Cross-Sound Cable provides significant and substantial benefits to Connecticut and New York both in the form of improved reliability, as you heard from Mr. Museler, and in enhancing trade of energy between the New York and New England regions.

Operation of the cable "as is where is" today provides absolutely no impact to the environment or absolutely no impact to navigation in the New Haven Harbor or elsewhere in Long Island Sound.

Finally, Cross-Sound Cable is currently in an unacceptable Catch-22 situation created by the Connecticut authorities under which Connecticut refuses to let us operate on the grounds that certain permit conditions have not been met despite all the agencies in Connecticut and the national level acknowledging there are no impacts, while at the same time refusing to consider our request for either complying with the permits, which we want to do, or waiving subject permit conditions.

First, the issue of the significant benefits to Connecticut and New York Long Island. As you heard, the Cross-Sound Cable was not energized during the August 14 blackout. At 11 that evening on August 14, there was a conference call between the system operators, Cross-Sound Cable, LIPA, the Department of Energy, and we were ordered to immediately activate the project. Within 12 hours the project was activated, and we were transferring a significant amount of energy to Long Island, helping consumers come back on line and, very importantly, helping stabilize the grid.

During that first couple days of the recovery from the blackout, the facilities were transferring not only energy to Long Island that was severely needed, but also helped stabilize the voltage when there was a severe lightning storm that came through the area and disrupted transmission lines on Long Island.

Since that time, since August 14, the project has operated 18 times dynamically, automatically, when there have been equipment failures or lightning strikes on the transmission grid. It is improving the reliability of the grid on both sides. Two-thirds of those 18 times occurred in Connecticut.

And, finally, since August 14, these facilities have provided significant voltage support in both Long Island and New York. It is a service that must have some value because we are ordered on a regular basis to provide it, and we do at the direction of the system operators in Connecticut who have the responsibility of ensuring that the grid operates reliably.

Also, the project has been used on several occasions to help the wholesale markets in Connecticut and in Long Island. In fact, when Connecticut's energy supply was at dangerously low levels during an extreme cold spell in January 2004, we were ordered by the New England ISO to stop immediately any transfers to Long Island, which, of course, we did immediately, and LIPO was ordered to make up to 200 megawatts of energy immediately available to export to Long Island because of the critical cold spell they had. LIPO had significant and sufficient resources to do that, and we were ready to supply the energy. Luckily for Connecticut, the temperatures increased, the load was left low, and Long Island did not have to ship the power in the end, but we were available to provide that service. We also tempered wholesale prices during that time. So the project does provide significant benefits.

There is no environmental impact of operating as is where is. All State and Federal agencies with jurisdiction over the cable have reviewed operation of the cable as is where is. Specifically the Connecticut Department of Environmental Protection, the National

Marine Fisheries and the U.S. Army Corps of Engineers all have determined that there is absolutely no environmental impact as of operating as is where is and no threat to navigation or maintenance of the Federal channel.

The DEP has looked at this for quite some time. I think it is interesting to note a letter that they wrote on June 13, 2002, to Mr. Blumenthal. In that letter they made it very clear that the published rhetoric of this project was eclipsing the facts. I would like to quote from that letter, from Mr. Art Rocque, the Chairman of the Department of Environmental Protection, to Mr. Blumenthal: "I would be remiss if I did not note my disappointment in your characterization of the impacts associated with both the installation of the cable and the failure to attain greater depths in parts of the Federal channel as serious, critical and devastating to the environment. From an environmental perspective the cable project pales in comparison with even maintenance dredging of the Federal navigational channel in New Haven. Published rhetoric has eclipsed facts on this project at least from an environmental standpoint."

The Catch-22. We are not happy. I can say we spoke with all the fishermen that we could find, with the harbor master, with the pilots, with the U.S. Army Corps of Engineers. We spent millions of dollars surveying the route, working with the Connecticut Siting Council, looking at the harbor. We were requested by the U.S. Army Corps of Engineers would we consider a minus 48 burial depth below mean water. After thorough investigation and consultation with our engineers and the Corps we agreed. We knew about rock in the further reaches of the channel that Ms. DeLauro spoke of earlier. We surveyed it completely, and we avoided it all. Unfortunately we did find rock in an area that was not on any charts or any logs that we had done or the Corps or anybody else had done over the past 100 years, and we are now in this current situation.

We have made five separate proposals to the Connecticut DEP to either bury the cable to its permitted depth or operate the cable in its current location with no environmental impact. Four of those five proposals have been refused. The fifth is still pending. On January 6, 2003, the DEP wrote us, "While we may not have any environmental concerns with the operation of the cable in its current conditions, we do have significant procedural concerns."

The substantial and economic benefits and improved reliability that is available from our project come at no cost to Connecticut and without any harm to the environment or threat to navigation in New Haven Harbor or anywhere else on Long Island Sound. Instead of enjoying the Cross-Sound Cable benefits, Connecticut insists on maintaining this Catch-22 situation under which Connecticut precludes operation of the cable on the grounds that we don't meet permit conditions, yet will not allow the Connecticut DEP to evaluate our request to make modifications.

I think this is wrong. I think public policy needs to be debated. And I respectfully urge the subcommittee to approve necessary legislation to immediately reenergize and place into regular operation the Cross-Sound Cable so that Connecticut, New York, and the re-

gion can enjoy the substantial benefits of the project. We thank you for your time.

[The prepared statement of Jeffrey A. Donahue follows:]

PREPARED STATEMENT OF JEFFREY A. DONAHUE, CHAIRMAN AND CEO, CROSS-SOUND CABLE COMPANY, LLC

I. INTRODUCTION AND SUMMARY

Mr. Chairman and Members of the Subcommittee: Thank you for the opportunity to speak today on the many benefits the Cross Sound Cable electric transmission project provides to Connecticut, New York, and the Northeast. My name is Jeffrey A. Donahue, and I am Chairman and Chief Executive Officer of Cross-Sound Cable Company, LLC ("CSC LLC"). A summary of my experience and qualifications is attached as Exhibit JAD-1.

While the Cross Sound Cable ("CSC" or "Project") has been the subject of considerable controversy over the last few years, one point is incontrovertible—the CSC is the first major interstate electric transmission project to be built in the Northeast in more than a decade. For better or worse, the CSC has been used as a "poster child" for many purposes: as the first market-based transmission link in the U.S.; as the first application in the U.S. of advanced high voltage direct current transmission technology and advanced underground cable installation techniques; and, perhaps most widely, as a symbol of what is wrong with our Nation's framework for siting needed electric transmission infrastructure.

Rather than add to the political rhetoric you may have heard regarding the CSC, my testimony today seeks to provide the Subcommittee with the facts regarding this important infrastructure project. Specifically, my testimony makes the following three key points:

1. Operation of the CSC provides significant and substantial benefits to Connecticut and New York, both in the form of improved reliability to the electric grid and enhanced trade of energy between New England and New York.
2. Operation of the CSC "as is where is" has absolutely NO impact on the environment of Long Island Sound, nor does it provide any impediment to navigation in New Haven Harbor or elsewhere in Long Island Sound.
3. The CSC is currently in an unacceptable "Catch-22" situation created by Connecticut authorities, under which Connecticut refuses to let the CSC operate on the grounds that certain permit conditions have not been met (despite acknowledging the lack of impacts from CSC operation) while at the same time refusing to consider CSC LLC's requests to either comply with or waive the subject permit conditions.

With this testimony, I intend to provide the Subcommittee with the facts and background necessary to gain a better understanding of the CSC and the need for its immediate re-energization and placement into regular commercial service through the enactment of Federal legislation.

II. DESCRIPTION OF THE CROSS SOUND CABLE

The CSC is a 330 megawatt bi-directional, high voltage direct current and fiber optic cable system that runs under Long Island Sound and can transmit electricity in either direction between New Haven, Connecticut and Brookhaven, Long Island, New York. CSC LLC commissioned the Project in August 2002. CSC LLC is a joint venture between TransEnergie U.S. Ltd., a wholly-owned subsidiary of Hydro-Québec, and United Capital Investments, Inc., a non-regulated business unit of UIL Holdings, Inc., which owns the United Illuminating Company, a regulated utility in Connecticut.

III. HISTORY OF THE CROSS SOUND CABLE

My October 2003 affidavit to the Department of Energy, attached as Exhibit JAD-2, provides a complete history of the permitting of the Project. For ease of reference, I have summarized this history below.

On June 1, 2000, the Federal Energy Regulatory Commission ("FERC") granted the CSC project sponsors the first-of-its-kind authorization to make sales of electric transmission capacity in interstate commerce at negotiated rates. *TransEnergie U.S. Ltd.,* 91 FERC ¶61,230 (2000). FERC granted this authorization because the full financial risk for the project costs is borne by the developer (*i.e.,* CSC LLC) rather than captive ratepayers, and because the project "enhances competition and market integration by expanding capacity and trading opportunities between the New England and New York markets." *Id.* at 61,838. Pursuant to an "open season" auction

process, the Long Island Power Authority ("LIPA") subscribed to the full capacity of the CSC.

CSC LLC then began the process to obtain the required state and federal permits. The New York State Public Service Commission ("NYPSC") granted a certificate of environmental compatibility and public need on June 27, 2001, finding that the CSC will "enhance regional and local competition in the electric power industry and [] improve system reliability." (NYPSC Article VII approval at 12.) The Connecticut Siting Council ("Siting Council") followed suit on January 3, 2002, finding that "the proposed project would enhance the inter-regional electric transmission infrastructure and improve the reliability and efficiencies of the electric system here in Connecticut as well as in New York." (Siting Council Decision and Order at 1.) As the Siting Council recognized, "recent events have demonstrated that preparedness and cooperation [among the states] are in the best interest of the State, region, and the nation." *Id.*

Then, in March 2002, the U.S. Army Corps of Engineers ("Army Corps") and Connecticut Department of Environmental Protection ("DEP") issued the necessary permits for CSC LLC to install the Project. The permits each included an identical condition that, within the Federal Navigation Channel ("Federal Channel") in New Haven Harbor, the Project's cable system must be buried to a depth no less than the deeper of six feet below the seabed or 48 feet below mean lower low water. The reason for this requirement was to accommodate the possible future deepening of the Federal Channel by the Army Corps, although the Army Corps currently has no plans to deepen the Federal Channel. Significantly, the DEP and Army Corps permits each grant CSC LLC a period of years for the completion of all installation work for the CSC, including meeting the burial depth requirement.[1] For the areas outside the Federal Channel, the Army Corps and DEP permits required cable system burial depths of at least 4 feet and 6 feet, respectively, below the seabed of the Sound.

In May 2002, CSC LLC substantially finished installation of the cable system in accordance with its permits. However, when burying the cable system, CSC LLC encountered previously undiscovered hard sediments and bedrock protrusions along portions of the route within the Federal Channel. CSC LLC immediately notified DEP and Army Corps that it was unable to achieve the permitted burial depth in all locations. The CSC is buried to the permit depth along 98 percent of the entire span, and over 90% of the route within the Federal Channel to an average of 50.7 feet below mean lower low water, well below the required level of minus 48 feet.

## IV. OPERATION OF THE CSC PROVIDES SIGNIFICANT AND SUBSTANTIAL BENEFITS TO CONNECTICUT, NEW YORK AND THE REGION

### A. The CSC Significantly Improves the Reliability of the Connecticut and New York Grids

Upon being energized pursuant to the Secretary of Energy's orders in the wake of the August 2003 blackout, the CSC assisted in restoring power to and stabilizing the transmission system in the northeastern United States. The Secretary's order allowed the CSC to transmit and deliver power and to provide critical voltage support and stabilization services to the transmission systems in Connecticut and New York.

1. *Voltage Support for the Connecticut and Long Island Electric Grids*

Since September 1, 2003, the CSC has been operating with excellent consistency and has been recognized for its value in ensuring a reliable power supply in both Connecticut and New York.[2] ISO-New England (the independent operator of the New England transmission system) directs the operators of the CSC when to transmit power over the CSC and when to provide (simultaneously or separately) voltage support to the neighboring transmission systems. The inherent capability of the high voltage direct current cable system allows it to act immediately and automatically to help smooth out the aftershocks of electric system spikes and other disturb-

[1] The DEP permit requires compliance with the permit conditions within 3 years from the date of issuance of the permit. The Army Corps has, by letter, authorized operation of the CSC for an indefinite period of time while CSC works in good faith to address the permit depth requirements.

[2] ISO-New England, Inc. has stated that the CSC "offers an overall benefit to New England" because the facility is a "valuable tool" in case the system faces any additional system instability. *Blackout Fails to Subdue Connecticut's Opposition to Activation of Cross Sound, Power Daily Northeast,* August 20, 2003.

ances in Connecticut and New York, which in turn lowers the risk of other transmission lines switching off and magnifying a system problem.

While the CSC operated full time pursuant to the DOE order, CSC LLC responded to 108 requests by ISO-New England and 9 requests by the New York Independent System Operator ("NYISO") to help maintain a steady operating voltage on the Connecticut and New York transmission systems, respectively. Importantly, the CSC's capability to respond to these grid operators' requests for voltage stabilization not only provides reliability benefit, but also provides environmental benefit, as it reduces the need to start up less efficient and dirtier power plants (including plants in New Haven) that would otherwise be needed to provide the same level of service.

In addition to responding to requests by ISO-New England or NYISO to forestall anticipated difficulties, the CSC also responds automatically to unanticipated system disturbances. During operation pursuant to the DOE order, the CSC responded 18 times to reduce system disturbances caused by lightning strikes, transformer failures, transmission line faults and unknown events. Twelve of these responses (two-thirds) were to disturbances on the Connecticut grid.[3]

2. *The CSC Provides Another Critical Path for Emergency Energy and Reserves*

In addition to stabilizing the regional transmission system, the CSC has been used as an operating reserve in times of power scarcity. In fact, when Connecticut's energy supply was at dangerously low levels during an extreme cold spell in January 2004, the CSC was on standby at ISO-New England's request to export 200 megawatts over the CSC from Long Island to Connecticut. During this period, the CSC (while it did not ultimately have to export any power from New England to New York) remained on standby in anticipation of an order to transmit power from Long Island to Connecticut.

Southwest Connecticut has been widely identified as one of the most transmission-deficient and capacity-constrained areas in the U.S. transmission system. Long Island has exported power to Southwest Connecticut many times in the past, including during the July 2, 2002 heat wave, using the existing "1385" submarine cable between Norwalk, Connecticut and Northport, New York. Last fall, ISO-New England and NYISO coordinated a successful test that sent power from New England over the Cross Sound Cable to Long Island while simultaneously returning power from Long Island over the 1385 cable to Connecticut.

Energy exports out of New England have no impact on the reliability of the New England system. In fact, ISO-New England will not schedule any exports out of New England if the transfer of such power would degrade the reliability of the New England system. Energy flows over the CSC are jointly controlled by the NYISO and ISO-New England under the same reliability rules applied to all other interconnections between New York and New England. Under those rules, energy flows over any transmission line will only occur if such flows do not jeopardize the electric system of the exporting region.

**B. The CSC Provides Valuable Economic Benefits to Connecticut and New York**

Operation of the CSC benefits Connecticut electricity consumers. The affidavit submitted to DOE by my colleague Dr. Raymond L. Coxe (attached as Exhibit JAD-3) provides a full discussion of the CSC's numerous economic and reliability benefits to Connecticut.

Specifically, Dr. Coxe found that for the years of 2004 and 2005, the CSC is expected to provide reliability and economic benefits of approximately $40 million per year to electricity market participants in New York and New England.[4] Failing to operate the CSC during this period would forego those benefits, thus unnecessarily increasing costs to consumers in both regions. In any evaluation of the public interest regarding the operation of the CSC, the potential loss of these benefits must be considered. Clearly, the public interest benefits of the continued operation of the CSC are tangible and substantial.

Independent analyses of the impact of discontinuing operation of the CSC confirm our internal analyses. On October 24, 2003, one of the world's leading energy research and consulting firms, Cambridge Energy Research Associates ("CERA") published an analysis on the impact of the CSC. This report, *CERA Alert: Effect of the Cross Sound Cable,* describes CERA's simulation of the operation of the electricity

[3] In Connecticut, automatic CSC responses were on September 2, 15, 23; October 1, 10, 14, 17, 31 (twice); January 6, February 3 and March 5. In New York, automatic CSC responses were on August 17, September 4, October 14, March 3 and 5, and May 3.

[4] This figure does not include the cost of emergency generating facilities that LIPA has announced will be required to replace the power transmitted by Cross Sound Cable this summer.

markets in Connecticut and Long Island for 2004 and 2005, for the following two cases:

- A Base Case which reflected the operation of the CSC during those years; and
- A Change Case in which the CSC was not available for operation.

In these simulations, CERA used the same base case assumptions that CERA is using for its other work on transmission congestion and generation asset valuation.

The CERA Alert summarizes CERA's analysis of wholesale electricity market prices in Connecticut and on Long Island. The CERA Alert notes that failure to continue operation of the CSC would raise average annual wholesale spot electricity prices on Long Island by between 4% and 5%, with no corresponding reduction in average annual wholesale electricity prices in Connecticut.

Regulatory agencies with direct responsibility and jurisdiction over the CSC have recognized the significant economic benefits to Connecticut provided by the CSC. These independent agencies include the Connecticut Siting Council, the FERC, and the NYPSC.

The Connecticut Siting Council, after a full consideration and review, unanimously concluded that the CSC would provide a public benefit to Connecticut. Specifically, the Siting Council found that "the wholesale price of electricity in New England should not increase with the export of up to 330 MW of electricity from Connecticut to Long Island." (Findings of Fact No. 23). The Siting Council further found that the CSC "could increase the competition and markets available to electric generators in New England and Long Island" (Findings of Fact No. 15) and that "an open competitive market for electricity, enhanced by the increased capability for trade [provided by the CSC], will result in increased private investment in infrastructure, and lower electricity costs for the region." (Siting Council Decision and Order at 1.)

Further evidence of the CSC's benefits to Connecticut is the FERC's approval of the CSC. In its order approving rates for the CSC, FERC stated that the CSC "enhances competition and market integration by expanding capacity and trading opportunities between the New England and New York markets." (FERC order at 7.) FERC further found that the CSC "will provide benefits to electric consumers and producers in both markets while imposing no risk or cost on captive customers in any market." *Id.*

V. OPERATION OF THE CSC HAS NO ENVIRONMENTAL OR NAVIGATIONAL IMPACT

**A. Agency Findings of No Harm to Operate Cable As Is**

Both Federal and State agencies have confirmed that operation of the CSC "as is where is" neither causes any harm to the environment nor poses any threat to navigation. Specifically, neither the Army Corps nor the DEP have raised any environmental or substantive objection to operating the CSC at its current depth. DEP itself describes its objection as procedural, driven by a concern about the scope of Connecticut's legislative moratorium on Long Island Sound energy projects, not by environmental issues.

1. *Army Corps Finding of No Harm to Environment or Navigation*

The Army Corps has determined that operation of the cable as installed would cause no environmental harm or interference with navigation. Accordingly, the Army Corps has expressly authorized operation of the CSC while CSC LLC continues work toward attaining the required depth.

On December 30, 2002, the Army Corps issued a letter to CSC LLC confirming that operation would not pose navigational or environmental harm and stating that the Army Corps had no objection to present cable operation at the current depth while CSC LLC sought to work with the DEP to obtain necessary approvals to reach the authorized depth. The letter stated:

> The Corps of Engineers, in consultation with National Marine Fisheries Service, has determined that there will be no undue short-term environmental harm or interference with navigation with the cable in its present location until full burial depth can be achieved. Since you are working in good faith to reach the required burial depth, the Corps of Engineers has no objections to you operating the cable at this time.

2. *DEP Finding of No Threat to Fisheries Resources from Operation at Present Depth*

The DEP made a similar determination of no environmental harm from operation of the cable system as installed. Shortly after CSC LLC notified DEP that the cable could not buried to the permitted depth in a few locations, DEP Commissioner Arthur J. Rocque responded in a June 13, 2002 letter to a letter from Richard Blumenthal, Attorney General of Connecticut, by placing the environmental impacts

in appropriate perspective and expressing his concern about the "published rhetoric" about such impacts:

> I would be remiss if I did not note my disappointment in your characterization of the impacts associated with both the installation of the cable and the failure to attain greater depths in part of the federal channel as serious, critical and devastating environmental impacts . . . From an environmental perspective, this cable project *pales in comparison* to even maintenance dredging of the federal navigational channel in New Haven Harbor ...[P]ublished rhetoric has eclipsed facts on this project, at least from an environmental impact standpoint.

However, in contrast to the Army Corps, the DEP stated that, as a matter of procedure, it would not permit operation of the CSC while CSC LLC was endeavoring to meet the burial depth requirements. Nor would the DEP permit CSC LLC to work to meet the burial depth requirement. According to the DEP, the Connecticut legislative moratorium on agency consideration of proposed crossings of Long Island Sound by utility projects (including interstate transmission lines) prevents DEP from allowing CSC LLC (by permit modification or by new permit) either to continue working to meet the burial condition or to allow operation of the CSC in its current location—effectively denying CSC LLC any recourse to the gradual loss of its permit rights. The CSC had by this time become a highly politicized project in Connecticut. As a result, while construction was completed and there remained no substantive objections to operation of the CSC, the CSC had not operated for an entire year until directed to do so by DOE's post-blackout orders.

3. *Chronology of Correspondence with DEP and Specific DEP Findings*

On July 22, 2002, the DEP wrote to CSC LLC stating that while cable system operation was not specifically within its jurisdiction, the environmental impact of operation was within its jurisdiction. The DEP therefore requested additional information about the environmental impact of operation as installed. The DEP also confirmed that the cable system's current location did not constitute a permit violation because the permit's installation work period to achieve the authorized depth had not yet expired (and does not expire until March 17, 2005). CSC LLC responded to the DEP by letter dated July 24, 2002, with supporting documentation demonstrating that operation at the current depth would pose no adverse environmental or navigational risks.

On November 18, 2002, CSC LLC submitted a request to DEP to further bury the cable system to the required depth in the several locations within the Harbor where the cable system did not rest on rock, by using alternate installation tools and methods. On December 23, 2002, the Director of the DEP Office of Long Island Sound Programs ("OLISP") denied CSC LLC's request to further bury the cable system to the permitted depth but responded to CSC LLC's July 24, 2002 report of no impacts from operation in the current location. In its response, DEP agreed with the demonstration in CSC LLC's July 24, 2002 letter with respect to environmental impacts, and specifically that the electromagnetic field ("EMF") and temperature variations associated with operation at the current depths "would not be expected to impact fisheries resources." The DEP stated that the permit depth requirement was specified by the Army Corps as the requisite depth to accommodate navigational concerns and deferred to the Army Corps regarding those concerns.

On January 6, 2003 DEP wrote to CSC LLC that: "[w]hile we may not have any environmental concerns with the operation of the cable in its current condition, we do have significant procedural concerns." The DEP objected to operation during the time required for the CSC to reach authorized depth in those limited areas where the cable system requires further burial. The DEP's objection is based on its interpretation of the depth requirement of its permit as prohibiting operation of the cable system at any other depth, notwithstanding the absence of environmental harm from operation. The DEP referred to this barrier to operation of the cable system in its current location as a "procedural" obstacle to operation and has informed CSC LLC that a new permit would be needed in order for CSC LLC to operate before further burial work is performed. Furthermore, under Connecticut's moratorium, DEP is precluded from considering any new permits for energy projects crossing Long Island Sound.

**B. Post-Installation Monitoring Studies Indicate No Significant Impact**

Pursuant to the conditions of state and federal permits for the CSC, a survey program was developed to monitor the sea bottom under New Haven Harbor and Long Island Sound in connection with the cable system's operation. Survey procedures were developed in conjunction with the Army Corps, DEP, the National Marine Fisheries Service, and the Connecticut Bureau of Aquaculture. The program consists of four monitoring surveys, at 6 months, 12 months, 18 months and 30 months after

initial cable system installation in May 2002. The first two surveys, conducted in fall 2002 and spring 2003, were reviewed by Charles H. Evans, the Director of DEP's Office of Long Island Sound Programs, who stated: "what we are seeing is within the range we had expected, which are really very minor effects." [5]

The 18-month survey, conducted in November and December 2003, was the first survey performed during cable system operation. The report with the results of this survey is attached to my testimony as Exhibit JAD-4. This report concludes that the installation and operation of the CSC has resulted in only minor and short-term effects on bottom-dwelling organisms. More specifically, the recently released report includes scientific data and analysis demonstrating that:

- Cable system installation effects to living organisms within the Long Island Sound seabed and floor of the New Haven Harbor Federal Navigation Channel ("benthic habitats") have been short-term and very minor;
- Benthic habitats in many places within the cableway have returned to the same conditions observed prior to cable system laying;
- There are no significant differences between seabed images of benthic habitats located within and outside the cable system embedment area;
- The six benthic habitats detected during the pre-installation surveys within the five study areas continue to exist with no significant changes;
- The single area of actively farmed shellfish beds traversed by the cable system (for a length of 707 feet) continues to demonstrate high benthic quality;
- The variation of measured magnetic fields with the CSC operating has remained the same since the initial pre-installation monitoring survey; and
- There is no evidence to suggest that the presence of the cable system will affect commercial vessel navigation on the water surface since there has been no detectable change in the compass measurements collected.

A May 13, 2004 study released by the Bureau of Aquaculture of the Connecticut Department of Agriculture summarizes their pre- and post-installation shellfish analysis program within New Haven Harbor. The Bureau of Aquaculture report suggests that the cable system installation, among other possible sources during the same time period such as effects from parasites or shellfish spawning processes, potentially affected some of the sampling population. Post-installation samples also indicate that these effects have since subsided. The report does not take into consideration, however, the significant effects of sediment dispersed by the first stage (Winter 2002-2003) of the major maintenance dredging project conducted by the Army Corps that took place between the Bureau of Aquaculture's sampling stages. This Bureau of Aquaculture report, along with the benthic monitoring studies, further confirms that the effects of the cable system installation have been minor and short-lived.

**C. New Haven Harbor Maintenance Dredging Completed over Cable System**

Further evidence of the CSC's lack of impact on navigational needs in New Haven Harbor is provided by the Army Corps' recently completed maintenance dredging of the Federal Channel, the first such dredging performed in over a decade. This dredge project took place in stages over the past two winters and required the mechanical dredging of over 650,000 cubic yards of sediment from the Federal Channel and its side slopes. At the same time, several facilities along the harbor coastline are dredging out their berths to remove another 80,000 cubic yards of sediment.

CSC LLC worked very closely with the Army Corps while dredging activities were accomplished near and directly above the cable system in several locations, including dredging over the section of cable resting atop unforeseen bedrock. At no time did the cable system pose an obstacle to the dredging, or prevent authorized channel depths from being restored. While this dredging took place, the CSC was fully available and continued to operate under the direction of ISO-New England. CSC LLC appreciated the opportunity to contribute to this successful Army Corps dredge project, and is pleased with the confirmation that the cable system poses no impediment to the maintenance of this important shipping lane.

According to the Army Corps permit application to the DEP, dredging the Federal Channel affected approximately 157 acres of the harbor bottom. By way of comparison, that area is thirty-one times greater than the approximate 5 total acres affected by installation of the cable system. In addition to the much smaller area of impact, installation of the CSC's cable system was performed by means of a minimally intrusive low-impact water jetting tool, which placed the cable system to an average depth of over 10—feet beneath the channel seabed, rather than a mechanical dredge using a large clamshell bucket.

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[5] "Cross-Sound Cable Effects Unclear", *Hartford Courant Online* (ctnow.com), November 22, 2003.

VI. CONNECTICUT'S "CATCH-22" EFFECTIVELY BLOCKS OPERATION OF THE CSC WITHOUT REGARD TO THE PROJECT'S SUBSTANTIAL BENEFITS, LACK OF IMPACTS, AND CSC LLC'S RIGHTS UNDER THE PROJECT'S PERMITS

### A. CSC LLC Has Made Repeated Requests to DEP to Either Further Bury or Operate the CSC

CSC LLC has submitted five (5) separate proposals to DEP to either bury the cable to its permitted depth or operate the CSC in its current location with no environmental impact. Despite acknowledging the lack of environmental impacts from operation, DEP has refused to let CSC LLC either bury the cable system deeper or operate, thus creating the classic "Catch 22" situation in which CSC LLC finds itself, as outlined below. Connecticut enacted legislation specifically targeted to prevent CSC from complying with its permits and block the Project from operating. While preventing CSC LLC from complying with or seeking waiver from its permits, Connecticut contemporaneously authorized a major dredging project in the same harbor (New Haven) with exponentially larger environmental impacts, and supports a plan to dump dredge spoils in Long Island Sound.

1. *Connecticut's Moratorium on Energy Projects Crossing Long Island Sound*

In the spring of 2002, while the Connecticut Attorney General's appeal of the Siting Council approval of the CSC was pending (and ultimately dismissed), the Connecticut legislature passed Public Act 02-7 ("P.A. 02-7"), which enacted a moratorium on the consideration of new applications for electric transmission cables and gas pipelines crossing the Sound and, moreover, retroactively voided permits already granted for electric transmission cables (but not gas pipelines) that had not yet been installed—which was Cross Sound Cable's situation at that time. The class of entities affected by the retroactive provision was a class of one: Cross Sound Cable. The Governor of Connecticut vetoed P.A. 02-7 on April 19, 2002, recognizing in his formal veto message the grave constitutional infirmities of "unfairly penaliz[ing] a company that has followed the [agency approval] process set up by the General Assembly." (April 19, 2002 veto message at 2.) The legislature sustained the veto on April 24, 2002.

The legislature then revised the vetoed act and passed a new bill, now Public Act 02-95 ("P.A. 02-95" or the "Moratorium Law"). The Governor signed P.A. 02-95 on June 3, 2002, and the law went into effect on that date, after CSC LLC had obtained all necessary permits to install and operate the cable, and after its initial burial of the cable was completed on May 28, 2002. The Moratorium Law forbade state agencies from "consider[ing] or render[ing] a final decision for any applications relating to electric power line crossings, gas pipeline crossings or telecommunications crossings of Long Island Sound" for one year from the effective date of the statute, during which period a task force was to complete a comprehensive environmental assessment and plan. The law provided that after the task force completed its work, "[a]ny application for an electric power line . . . crossing of Long Island Sound that is considered by any state agency" is to be additionally evaluated based on the results of the task force's study. The task force released its report on June 3, 2003—the day the moratorium was set to expire.

On June 26, 2003, Connecticut enacted legislation that extended the original one-year duration of the moratorium another full year to June 2004. In September 2003, subsequent to the energization of the CSC pursuant to the Secretary of Energy's orders after the August 14, 2003 blackout, Connecticut Governor Rowland called for an evaluation of the impacts of operating the CSC in its present location. DEP responded on October 31, 2003 by issuing a request for proposals from consulting firms to provide an evaluation of the impacts of operating the CSC in its present location. The deadline for responses to this solicitation was December 2003; however, to our knowledge DEP has yet to select a consultant to perform this evaluation.

Finally, just this month (May 5), the Connecticut legislature again extended the moratorium by another full year, to June 2005. The Connecticut legislature approved extension of the moratorium is spite of the opposition from both the DEP and the Connecticut Department of Public Utility Control ("DPUC"). In testifying on the effects of extending the moratorium on March 12, 2004, DEP Commissioner Rocque indicated that as both Chairman of the Connecticut Energy Advisory Board ("CEAB") and DEP Commissioner, both DEP and CEAB opposed extension of the moratorium. Chairman Downes of the DPUC further testified:

> I'd like to stress to you in the strongest possible terms that a continuing moratorium here is—has very bad effects, it has immediately bad electrical effects, it has immediately bad financial effects, and over the long term, we'll lose any opportunity at all to control these issues.

(Transcript of March 12, 2004 public hearing before the Environment Committee of the Connecticut General Assembly, page 16.)

2. *CSC LLC's Petitions to DEP*

The permits issued by the DEP and the Army Corps grant CSC LLC a period of time to complete installation work. CSC LLC has submitted a total of five separate requests to either perform further burial work or operate the CSC in its present location. DEP has rejected four of these petitions, and has not acted on CSC LLC's fifth request for almost one year.

- *REQUEST #1:* On November 18, 2002, CSC LLC submitted a request to DEP to bury the cable to the required depth in the several locations within the Federal Channel where the cable system did not rest on bedrock, using installation techniques appropriate for those locations. In its letters dated December 23, 2002 and January 6, 2003, the DEP interpreted the Moratorium Law as prohibiting the agency from issuing a decision on an application to modify the permit conditions. On January 6, 2003 DEP reiterated that "[w]hile we may not have any environmental concerns with the operation of the cable in its current condition, we do have significant procedural concerns."
- *REQUEST #2:* On January 15, 2003, CSC LLC filed a request with the DEP to modify its DEP permit to allow operation of the cable in its current location without any additional environmental impact from further construction or from cable operation, while CSC LLC completed a work plan and obtained necessary authorizations to reach the required burial depth during the life of the permit. That modification would harmonize the permit with the position of the Army Corps, which had stated no objection to operation in these circumstances. While CSC LLC believed that the DEP could grant this request under the existing permit terms, without applying for a certificate of permission ("COP"), CSC LLC included with its request the forms to obtain a COP under Conn. Gen. Stat. § 22a-363b, which, among other things, allows the DEP to approve "minor alterations or amendments to permitted activities consistent with the original permit." DEP again rejected CSC LLC's request by issuing a letter on January 17, 2003 stating that a COP would be needed for CSC LLC to obtain the requested permit modification but that the Moratorium Law prevented the DEP from considering or deciding the merits of an application for a COP relating to a utility crossing of the Long Island Sound.
- *REQUEST #3:* On May 23, 2003, CSC LLC filed a new request with DEP to modify its permit to allow operation at the current burial depth while CSC LLC worked with DEP and the Army Corps to address the permanent burial depth requirements. On June 2, 2003, on the day before the first moratorium expired, DEP notified CSC LLC that it could not consider this application, citing the first Connecticut moratorium and imminent enactment of the second moratorium. On June 11, 2003, just after expiration of the first moratorium and before enactment of the second moratorium, DEP denied this application on the grounds that operation of the CSC as is, even without any further environmental impacts, could not be considered a "minor alteration" of the original permit.
- *REQUEST #4:* On June 10, 2003, upon expiration of the first Connecticut moratorium, CSC LLC filed a new request to DEP to modify its permit to allow operation of the CSC while CSC LLC continued to work with DEP and the Army Corps regarding the burial depth issue. On June 13, 2003, just after expiration of the first moratorium and before enactment of the second moratorium, DEP denied this request on the grounds that operation of the CSC as is, without any further environmental impacts, still could not be considered a "minor alteration" of the original permit—despite expiration of the first moratorium.
- *REQUEST #5:* Finally, on June 12, 2003, in response to DEP's suggestions in its rejection of CSC LLC's May 23rd application (Request #3 above), CSC LLC filed a new permit application with DEP to allow operation of the CSC until December 31, 2007, while CSC LLC continued to work with DEP and the Army Corps regarding the burial depth issue. DEP has acknowledged receipt of this application but to date has taken no action, a period of almost one full year.

This continued pattern of rejection and delay by DEP demonstrates that CSC LLC is simply not being afforded a fair opportunity to either further bury the cable system or demonstrate that a waiver of the burial condition, and allowing operation "as is where is," creates no impact to the environment or navigation.

VII. CONCLUSION

CSC LLC was surprised with Secretary Abraham's decision to rescind his order authorizing operation of the Cross Sound Cable. As a result, the CSC's many benefits to Connecticut, New York, and the region are no longer being realized. The substantial economic benefits and improved reliability provided by the CSC come at no cost to Connecticut and without any harm to the environment or threat to navigation in New Haven harbor or elsewhere in Long Island Sound. Instead of enjoying the CSC's benefits to Connecticut, Connecticut insists on maintaining a "Catch-22" under which Connecticut precludes operation of the CSC on the grounds that certain permit conditions have not been met (despite acknowledging the lack of impacts from operation) while at the same time refusing to consider CSC LLC's requests to either comply with or waive the subject permit conditions. I respectfully urge the Subcommittee to address this situation by approving legislation that allows the CSC to resume full commercial operation and provide its substantial benefits to Connecticut, New York and the Northeast.

Mr. HALL. Thank you.

Mr. Kessel, purchaser of power, we recognize you for 5 minutes.

**STATEMENT OF RICHARD KESSEL**

Mr. KESSEL. Thank you, Mr. Chairman. And we thank you on behalf of not just Long Island Power Authority and our customers, but also on behalf of Governor Pataki for taking the time to look at an issue which I think we all recognize is an issue that is not confined to New York and Connecticut, but a national issue.

It seems that we have all forgotten the blackout of last summer when the Northeast and parts of Canada experienced the greatest power failure in our history. And in an environment when we are less than a year from that blackout, and an environment where terrorism has constantly reminded us about the infrastructure and the vulnerability of the infrastructure, and threats against the electric grid is one of them, to allow a perfectly normal transmission line to lie not used at the bottom of the Long Island Sound is absolutely preposterous and is really parochial politics and nothing more. That is what this issue is all about.

And in listening to the testimony, I think it is important to make some critical points here. No. 1, this is not about a cable being illegal. The opposition from my friend, the Attorney General Blumenthal in Connecticut, and others appeared before the cable was even built. This is not about the permitting conditions. This is really about parochialism and false environmentalism. I think there is no one who has a better record on environmental protection than our State, New York State, under the leadership of Governor Pataki.

I think it is important to just go through the arguments that have been made by Attorney General Blumenthal and others in Connecticut and point out the hypocrisy of some of them. The environmental argument—there is no environmental harm from that cable. That cable has operated, thanks to the Department of Energy's emergency order, since last August and was only recently shut down. And I have challenged the State of Connecticut and the Attorney General to show what environmental or navigational harm that cable has created in the 8 or 9 months that it has operated. It hasn't created any environmental harm whatsoever.

I thought, since we have been talking about it all morning, that I would bring several sections of the cable, and I would like to share this with the committee. If this could be put in the record,

I think it should, because this is what we are talking about. So maybe we can pass this up in some way, and you can take a look at the cable yourself.

And I would also like to give a piece of the cable to my friend Attorney General Blumenthal. I would like him——

Mr. BLUMENTHAL. I have received it before. So this kind of gamesmanship is what it is.

Mr. KESSEL. It is not gamesmanship. This is the cable, Mr. Attorney General. I would like you to show us after my time period is up, based upon the fact that this is solid in nature, can't leak at all, I would like you to show us with this piece of cable what the environmental harm is as compared to the dumping of dredging materials that you are silent about from the State of Connecticut. When there is an environmental issue that impacts the State of Connecticut you are strangely silent, but when it is an environmental issue regarding the Cross-Sound Cable, you lead the charge.

As I indicated the other day, I challenge you to create the same opposition to the dumping of sludge, which takes up approximately 4½ square miles of the Long Island Sound as opposed to the .027 square miles that are impacted by the faults in the cable. Either you love the Long Island Sound and you care for it, or you don't. Your silence, frankly, on the dumping of sludge in light of your opposition to the cable, frankly, to me is astonishing. There is no environmental damage to the sound. And that is not just something that we are making up here, but it has been found not only by New York and Connecticut, by the Army Corps of Engineers and everyone else. There are no environmental problems. There are no navigational problems.

Second of all, I constantly hear that Long Island hasn't done anything. Well, that is not true. As the chairman of the Long Island Power Authority, I can tell you that we have installed 50 new small power plants across our service territory over the last 3 years, equating to 600 megawatts of new on-island generation. Additionally, we have spent between $35 and $40 million a year on energy efficiency and demand-side reduction programs, and next week we will be announcing a long-term energy plan to add 1,000 megawatts of new electricity for Long Island over the next 7 to 10 years.

I think it is important to note that when you look at what Connecticut has added and subtracted to its energy supply, it is less than what we have done on Long Island in the last 10 years. In fact, since 1994 through 2004, Connecticut, net—when I say net, that is adding and subtracting, because they have decommissioned a number of plants in Connecticut—the net added impact of megawatts in the entire State of Connecticut is 621 megawatts. Our additions on Long Island net 863 megawatts. So when you talk about Long Island not doing anything for itself, the bottom line is that Long Island has added more megawatts than the entire State of Connecticut combined in the last 10 years.

Finally, the issue of rates going up is just a specious argument. The fact is that the Cross-Sound Cable would not just benefit Long Island, but would benefit Connecticut, and particularly southwest Connecticut where there is a tremendous congestion problem.

We have already indicated, Mr. Chairman, that we could take electricity from Connecticut, bring it down the Cross-Sound Cable, across Long Island, and up the 1385 line that Attorney General Blumenthal mentioned into southwest Connecticut. That would not only help in the event of potential problems this summer, which everyone recognizes could occur, but also would reduce congestion charges in that part of the State and ultimately, obviously, benefit the people of Connecticut.

So let me conclude by urging this committee that you must get involved. The Cross-Sound Cable is a symbol of what is wrong in this country, with the reliability of the electric grid. It shouldn't have to take another blackout for us to remind ourselves of what happened last summer and of what customers go through whether they are in Connecticut, Long Island or California when the lights go out. So I urge congressional action on this matter, quickly and appropriately, in time for the summer season. Thank you.

[The prepared statement of Richard Kessel follows:]

PREPARED STATEMENT OF RICHARD KESSEL, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, LONG ISLAND POWER AUTHORITY

My name is Richard M. Kessel and I serve as Chairman of the Board and Chief Executive Officer of Long Island Power Authority (LIPA) located on Long Island in New York State. As an instrumentality of the State of New York and a public power agency, the Authority and its operating subsidiary, provide electric service to nearly 1.1 million customers, representing approximately 2.8 million people in Nassau and Suffolk counties, and the Rockaway Peninsula in the Borough of Queens, New York City.

I am here today to deliver the message that electricity must flow freely on the interconnected interstate transmission grid, not only to benefit Long Island and New York, but Connecticut and New England as well. Every region of the country needs to provide the resources required to meet the needs of our citizens for electric energy. Those resources include generation from renewable and non-renewable resources, conservation and sustainable sources. However, *no* region of this country can develop and sustain those resources and meet those needs in isolation. The strength of our nation's system has been the interconnected grid and the sharing of resources for the common good of all. New York and greater New England believe that we should be supporting each other as the hot summer weather approaches and the Cross Sound Cable is an essential element of that support.

I want to thank Chairman Hall for calling this hearing and for providing me with the opportunity to testify. I also would like to thank the Chairman of the full Committee, Chairman Barton, for his leadership on the issues facing our electric transmission system and overall reliability and his continuing interest in the Cross Sound Cable.

THE BLACKOUT OF 2003—LIPA'S RESPONSE AND THE ENERGIZING OF THE CROSS SOUND CABLE

Last summer LIPA and its customers were caught up in the Northeast power blackout, which affected much of the Northeast United States and Southeastern Canada. Through the cooperation of LIPA's customers, who limited their demand, and the committed work of the employees of LIPA and our service contractor, KeySpan, over 80% of LIPA's customers had their power restored by 8:30 A.M. on August 15th, and all customers had electric service restored within 25 hours, 21 minutes of the blackout. That restoration was expedited by the energization of the Cross Sound Cable on the night of August 14 and 15 pursuant to the emergency order issued by the Department of Energy. Governor Pataki's initiative in requesting that emergency order was met with immediate response by the Department of Energy. The Cross Sound Cable not only provided for the delivery of electric power to Long Island, it helped prevent the type of re-occurring rolling blackouts on August 15th that is often typical of restoration of service after a widespread outage.

It was unfortunate that the Cable was not in service on August 14, 2003, as it might have helped ameliorate the extent of the outage on Long Island and played in a role in restoring service even faster.

In the aftermath of the Blackout and the uncertainty about its causes or possible recurrence, the Secretary issued a second order on August 28, 2003 that recognized that the emergency situation caused by shortages of power generation, transmission and distribution facilities continued to exist, and directed the continued operation of the Cross Sound Cable until such time the emergency was over.[1] The benefits of that order have been proven in the following nine months of operation, not only because of the electric energy transmitted between Long Island and Connecticut but also because the Cable has been called upon more than one hundred times to meet critical reliability needs. In fact, the Cable was called upon for stability purposes more often in New England than in New York.

In short, there was a lack of necessary resources in the region that could ensure the safe and reliable delivery of power in the northeast U.S. This was the underlying emergency addressed by the Secretary. From August 15, 2003 until May 7, 2004, the Cross Sound Cable operated under the Secretary's emergency order. Unfortunately, on May 7th, the Secretary rescinded his emergency order without notice. This decision will have significant negative impacts on the reliability and supply of electricity on Long Island, in Connecticut and throughout the region. While the blackout was a singular unprecedented event, the fact remains that our national electric transmission system needs significant improvement, and that we need to continue our efforts to enhance system reliability by expanding and improving the transmission system capabilities and interconnections.

Despite the significant growth in resources over the last six years, the Cable is an essential part of Long Island's resource picture. LIPA is taking aggressive steps to maintain and enhance the electrical system on Long Island. However, ultimately, the answer is clear—we need the Cross Sound Cable operating today and in the future. Electricity is supposed to be a fungible interstate commodity. The electricity grid does not recognize "Connecticut electrons" or "New York electrons." Electricity is supposed to flow over the interstate electric grid without regard to political boundaries. That is not what is happening here and, as a result, this situation is a poster child for federal intervention.

I refer you to my testimony of September 4, 2003 for a history of the development of the Cross Sound Cable. Mr. Donahue's testimony today also describes the Cable in great detail, including the reliability benefits it provided during the term of the recently expired emergency order. Needless to say, the short operating history of the Cable during the Emergency Order more than justified LIPA's vision when it commissioned a study of the project for benefits to both Long Island and New England.

Congress has recognized that the Cross Sound Cable is an essential component in the Northeast transmission grid by including in H.R. 6, the Energy Policy Act of 2003, a provision that would require the Cross Sound Cable to remain energized until Congress determines that it should be shut down. While that legislation remains in an uncertain state in the Senate, we believe this is sound policy.

LIPA—PROVIDING RELIABLE ELECTRIC SERVICE AND INVESTING IN INFRASTRUCTURE

We at LIPA are committed to doing whatever we can to create more stability in the transmission grid and provide reliable service to the people of the Northeast. The Authority and its operating subsidiary, LIPA, own and operate the transmission and distribution system on Long Island while also providing retail electric service to customers on Long Island. LIPA was established in 1986 by the New York State legislature to resolve a controversy over the Shoreham Nuclear Power Plant and to achieve lower utility rates on Long Island. Created as a corporate municipal instrumentality of the State of New York, the Authority was authorized under its enabling statute to acquire all or any part of the securities or assets of the Long Island Lighting Company (LILCO). In May 1998, thanks to the leadership of Governor Pataki, the Authority acquired LILCO as an operating subsidiary. This acquisition resulted in an average across-the board rate reduction of 20% to the LIPA's customers in Nassau and Suffolk counties, and the Rockaway Peninsula in Queens.

LIPA owns 1,344 miles of transmission and sub-transmission lines that deliver power to 175 substations in its electric system. From these substations, 13,075 circuit miles of distribution lines deliver the power to nearly 1.1 million business and residential customers, or a population base of nearly three million people.

On average, for the past several years, our peak demand has grown at a rate of approximately 100 megawatts (MW) per year. On a per-household basis, average

[1] In his August 28 Order, the Secretary stated that "an emergency continues to exist in the Northeast United States due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, a shortage of facilities for the transmission of electric energy and other causes."

residential consumption has increased 14% over the last five years, despite LIPA's varied and aggressive conservation and energy efficiency programs. The 2004 peak load forecast, approved by the NYISO for the Long Island Control Area (which includes both LIPA load and resources, load served by municipal utilities and generation resources not under contract to LIPA) is 5062 MW. The supply available to Long Island from generating resources on the island and the Y-49 and Y-50 cables is 5083 MW (measured in terms of installed capacity). The 5062 MW load forecast assumes "normal" weather conditions. LIPA's record summer peak, set on July 29, 2002, is 5059 MW. If the summer of 2004 proves to be as warm as 2002, the peak load is forecast at 5219 MW, an increase in the peak of 160 MW over 2002. In fact, if the extreme weather conditions (97°F and THI in excess of 83, fifth consecutive day of heat) that occurred in early July 1999 were to occur during the summer of 2004, a peak of over 5700 MW is expected. While load reduction programs may reduce this number by 100 MW, at this load level, extreme emergency measures will be required. It is informative to note that the actual July 1999 peak is no longer among the 15 highest Long Island summer peaks. The conditions discussed above would eliminate any reserve margin even assuming, unrealistically, that all equipment is available.

In order to maintain reliability and serve this growing market, LIPA has invested heavily in transmission infrastructure over the past six years, and will continue to do so. Since 1988, LIPA has invested $1.01 billion in our transmission and distribution (T&D) system. We have invested in a wide range of projects including new transmission and distribution lines, upgrades of existing lines, new substations, and improvements to existing substations. In addition, LIPA worked to establish a new interconnection between New York and New England across Long Island Sound—which ultimately became the Cross Sound Cable project. LIPA believed, and continues to believe, that development of this interconnection is essential to the reliability of Long Island and the inter-related region. I will not go in to greater detail on all of LIPA's investments and initiatives targeted at increasing reliability of the electric transmission grid now, but will refer you to my testimony given to the full House Energy and Commerce Committee on September 4, 2003.

To address future needs and growth of this area, LIPA has developed and issued a Draft Energy Plan for Long Island. LIPA is recognized as a leader in conservation and efficiency measures—promoting conservation, installing of new energy efficient lighting and appliances, and using energy efficient technologies and renewables such as geothermal heat pumps and photovoltaics—with the implementation of a five-year, $170 million Clean Energy Initiative. However, even with all of these efforts, it is not possible to meet all of our load requirements without a key component of our strategic plan—the Cross Sound Cable.

Officials in the State of Connecticut have argued that Long Island should develop additional generation resources and not rely on the Cross Sound Cable to "import" the energy it needs. LIPA continues to explore the building of new generation and has added 600 MW of new generation over the last three years. LIPA remains committed to installation of new generation resource, including renewables. However, it bears noting that there are challenges to building new gas fired generation on Long Island, due to constraints in the supply of natural gas to the region. Ironically, the State of Connecticut has also stymied the development of a natural gas pipeline across Long Island Sound which would address this issue and bring needed supplies of natural gas to Long Island.

Moreover, new generating facilities cannot be simply purchased off the shelf and installed overnight. LIPA has purchased mobile emergency generation for each of the last three summers in an effort to meet our load requirements. This demonstrates the dire situation that exists on Long Island. LIPA has moved as quickly as possible to secure new generation resources consistent with statutory and regulatory restrictions, its obligations for environmental protection and the needs of its consumers. In May and June of this year, the LIPA Board is expected to act on the results of several RFPs that will result in substantially more capacity over the next few years. Despite LIPA's best efforts, however, the reality is that LIPA is in functionally the same position as it has been over the few Summers. The Cross Sound Cable has been an important part of LIPA's resource plans. LIPA had planned and contracted for the Cable to meet the projected summer 2002 load. Through the Cross Sound Cable, LIPA anticipated purchasing the output from among the new large and efficient generating facilities that have come on line in New England. Conversely, LIPA assumed that the Cable would be available as well to meet electric demand needs in the high growth transmission constrained area of Southwest Connecticut around New Haven.

Despite our best efforts, it has not been possible to obtain sufficient generation or load reduction resources to meet the resources gap that DOE acknowledged in

2002. LIPA again faces the prospect of razor-thin reserves during heavy load conditions this summer because of the unavailability of the 330 MW Cross Sound Cable. As noted above, even with aggressive load reduction and conservation measures in place, the demand on Long Island continues to grow. Our planning and growth forecasts have been built on the availability of this essential transmission line and it is critical for the reliable service to the region. Any number of factors could severely affect the ability to meet demand on Long Island this summer. Our generation is aging and, in the summers of 2002 and 2003, we were fortunate to have 95% of the capacity available. However, historically, one can only rely on 90% of that generation—at most. Without the ability to use the Cross Sound Cable, the outage of one major generating unit could lead to blackout conditions. Weather is another unpredictable factor and if we were to have conditions similar to 1999, our peak load on Long Island will be 13% higher than we are currently projecting. (Current projections for this summer are 4910 MW. Under conditions similar to 1999, our peak would be 5551 MW). Without the Cross Sound Cable, there are very thin margins for being able to meet our load without having to resort to load shedding.

EMERGENCY USE OF THE CROSS SOUND CABLE

The Cross-Sound Cable has been able to provide significant support for the Connecticut and Long Island regions through the emergency orders issued by DOE. The summer of 2002 was consistently hotter than previous summers. In fact, LIPA experienced two all-time peaks in July 2002. Faced with extreme demands on the system and Connecticut's prevention of commercial operations the Cross Sound Cable, LIPA took the initiative to request an emergency order from the Department of Energy under Section 202(c) of the Federal Power Act. The Secretary of Energy has been given authority, under Section 202(c) of the Federal Power Act, when an "emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy," to "require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest." The Department of Energy issued such order to energize the Cross-Sound Cable on August 16, 2002, allowing it to operate through October 1 (the end of the summer). Connecticut opposed that action.

At the beginning of Summer 2003, the Cross Sound Cable again was rendered inactive due to the Connecticut moratorium and the Connecticut DEP's actions. However, on August 15, 2003, as a result of the evident emergency facing the Northeast due the Northeast blackout, LIPA received notice from the Department of Energy that Secretary Abraham, acting upon a request from New York's Governor George Pataki, had issued an emergency order immediately directing the operation of the Cross-Sound Cable pursuant to Section 202(c) of the Federal Power Act. Once active, the Cross Sound Cable provided essential electricity to Long Island and helped stabilize voltage on both Long Island and in Connecticut. The Cross Sound Cable transmitted 15,000 megawatt-hours of electricity over the critical three-day restoration period following August 14, enough to repower approximately 300,000 homes on Long Island.

That order was, initially, of a two-week duration. However, on August 28th, the Secretary of Energy issued an order determining that emergency conditions continue to exist "due to a shortage of electric energy, a shortage of facilities for the generation of electric energy, a shortage of facilities for the transmission of electric energy and other causes." Accordingly, the August 28th Order directed that the Cross Sound Cable remain energized to facilitate transfer of power between New York and New England (in both directions) and to provide voltage support and stabilization facilities.

THE NEED FOR THE CROSS SOUND CABLE

The recent final report of the U.S.-Canada Task Force on the Blackout confirms the need for the Cross Sound Cable. The blackout report concludes that "[r]eactive power problems were a significant factor in the August 14 outage, and they were also important elements in several of the earlier outages . . ." During the August 14 blackout, the Cross Sound Cable provided critical reactive power to Long Island and Connecticut to help stabilize the system.

Moreover, it is incontrovertible that in the time since the August 28 Order, an operational Cross-Sound Cable has helped "prevent a breakdown in electric supply" in a region where a shortage of transmission and generation facilities persists. The Cross Sound Cable is frequently called upon to provide critical reactive power voltage support in order to maintain operating voltages on the Connecticut transmission

system at the request of the New England Independent System Operator. The Task Force Report highlights the importance of this service stating that "Reactive power problems were a significant factor in the August 14 outage, and they were also important elements in several of the earlier outages . . ."[2] It went on to recommend the strengthening of "reactive power and voltage control practices in all NERC [North American Reliability Council] regions."[3] The Cross Sound Cable is currently the only operating cable system in Connecticut and Long Island capable of providing dynamic reactive power support during sensitive energy demand periods.

Since last August, the Cross Sound Cable has responded to 84 requests from Connecticut to maintain a steady operating voltage and 8 similar requests from New York. The cable has also responded 17 times to reduce system disturbances caused by lightening strikes, transformer failures, line faults, and unknown events. Nearly 80% of these disturbances were on the Connecticut grid. As vividly demonstrated by its reliable operation, the Cross Sound Cable not only provides important reliability benefits to Long Island residents, but also contributes directly to system reliability in Connecticut.

The high voltage, direct current, Cross Sound Cable can provide valuable assistance in efforts to stem system disturbances similar to those that occurred last August 14th and that caused blacked outs in New York and on Long Island. Further, while we recognize the Cross Sound Cable's contribution to removing emergency conditions, the facility also should be placed into full commercial operation so it can fully support and enhance the reliability of the adjoining New England and New York control areas. LIPA's nearly 1.1 million customers (serving nearly three million people), as well as the customers of utilities in Connecticut benefit from the increased protection against contingencies and outages afforded by the Cross Sound Cable. As the August 28 Order noted, in the aftermath of the August 14th blackout, the Cross Sound Cable not only helped deliver substantial amounts of energy to Long Island, but also provided "valuable voltage support and stabilization services for the electric transmission systems in both New England and New York."[4] These grid stabilization services not only helped the system in the region to recover from the blackout, but also prevented rolling blackouts in the aftermath of the restoration of service, and increased the overall reliability of the system.

We are grateful for the efforts of the New York Congressional delegation and Governor Pataki. Legislation has been introduced in both the House and in the Senate designed to keep the Cross Sound Cable energized. LIPA strongly urges Congress to ensure the optimization and full utilization of existing regional transmission assets such as the Cross Sound Cable.

Again, I thank the Committee for this opportunity to testify and for your interest in the Cross Sound Cable. LIPA looks forward to working with Chairman Hall and all members of this subcommittee on creating a solution that will enhance the reliability of our electric transmission and distribution systems and ensure the continued operation of the Cross Sound Cable.

Mr. HALL. All right. Thank you very much Mr. Kessel.

I would like to—I am kind of in a dilemma. Attorney general says this cable is illegal. Officials in Connecticut have determined that they are not going to authorize the use of the cable unless it is buried deeper in a few locations. Rock and other barriers are obstructing a deeper depth, I guess.

However, right at that time, Mr. Kessel, when they hit the rock—I am building a swimming pool at home. I am repairing an old swimming pool, and I had to go redo it to go to city plumbing. I had to dig a ditch. I got the cheapest ditch digger I could get, and he dug a ditch as deep as he could get it, and it was not deep enough because he hit rock. I live in a place called Rock Wall, and there is a rock wall around the—rock wall around the city. Manmade or whatever, nobody has ever decided, but we hit rock. I had to get heavier equipment.

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[2] The Task Force Report at p. 160.
[3] *Id.*
[4] August 28 Order at second paragraph.

Was there any heavier equipment that could have dug this to that depth and not have this dilemma of the rock that precluded that? Mr. Donahue.

Mr. DONAHUE. I would like to answer that. Yes, if we knew the rock that was there——

Mr. HALL. I am not criticizing that you didn't—apparently you didn't think——

Mr. DONAHUE. There was equipment and technology that can dig through the rock. I would like to mention, too, we hear a lot about the rock, this rock, this rock that the Corps didn't know about either, by the way. And we have heard a lot about the expansion of the channel. There are ways to remove the rock. If we have to get our cable down and remove the rock, we will. It is about 4,000 square feet of area would have to be cleared.

If in the future the Federal navigational channel is ever expanded, if it is, they are going to have to remove all the rock around us, over 130,000 square feet of rock, also in the future. We have agreed that if the channel is ever expanded, we will move the cable. There is technology out there. It will have to be used. If we have to lower our cable, it will have to be used if the channel is expanded.

We think it is smart to leave the cable as is, whereas only have the environmental impact of doing that actually once. When and if the future channel is expanded——

Mr. HALL. Well, so there could be more construction is what you are saying.

Mr. DONAHUE. Oh, yeah. Yeah, absolutely.

Mr. HALL. You get another situation here where the same officials from Connecticut have created a moratorium on the construction. So——

Mr. BLUMENTHAL. May I respond to that? Let me just explain about the moratorium. The moratorium dates from 2002, and it was adopted because of the plethora of lines, not just this cable, but literally a spaghetti of lines, pipelines for natural gas, cable lines for electricity, that were proposed. And what Connecticut said in effect was let's stop the construction so that we can plan intelligently.

Mr. HALL. You all had that discussion.

Mr. BLUMENTHAL. Now, the moratorium which has been extended to 2005 has a procedure which Cross-Sound could use to receive approval to go ahead. There is a waiver procedure. The moratorium is a red herring, if you will. A red herring, by the way, is not indigenous to the Sound. The dredge disposal issue is a red herring. I have said, and I will say again here, if it is illegal, I will fight it. That has been a matter of public record.

Mr. HALL. You say it is illegal. Your statement was it is not legal.

Mr. BLUMENTHAL. No, we are talking about the dredge disposal that Mr. Kessel mentioned and——

Mr. HALL. I understood you to say that the cable is not legal.

Mr. BLUMENTHAL. The cable is illegal in its present form.

Mr. HALL. If it is illegal, it is not legal.

Mr. BLUMENTHAL. That is right.

Mr. HALL. As the attorney for the State, what are you doing to make it legal?

Mr. BLUMENTHAL. Well, I can't make it legal, if you please, Mr. Chairman. With all due respect, they have——

Mr. HALL. What of the moratorium? Does the moratorium preclude that?

Mr. BLUMENTHAL. No. The moratorium provides for an approval procedure, an application procedure that they may avail themselves to do, and it also would enable them to do, if they could do, what has to be done to make the cable legal, but only by blasting the bottom of the sound. And that is in violation of their permit conditions which they have accepted. And so the moratorium isn't the problem. It is their disregard for what they knew was at the bottom of the sound.

The Army Corps of Engineers, contrary to what Mr. Donahue is saying, had indications and information about this ledge. There are memos in the Army Corps of Engineer's files, October 2000, that indicate this ledge is a problem, that rock is at the bottom of the harbor.

We are not dealing with some exotic remote part of the world that is unknown to us. New Haven Harbor has been well navigated and known for a long time, and the existence of a ledge there should have been no surprise through a substantial part of the harbor.

Mr. KESSEL. Mr. Chairman.

Mr. HALL. Mr. Kessel.

Mr. KESSEL. I have to correct some things here. First of all, it just surprises me that the issue on the sludge issue, and it is not a red herring, it is a significant issue, it is not just a legal issue, it is an environmental issue. The Attorney General and others in Connecticut have used the environmental issue for years in objecting to the cable. And whether the sludge is dumping of sludge in the Long Island Sound is legal or not, what about the environment?

You are the Attorney General that speaks up for the environment all the time, and I am frankly surprised that you won't stand up with the same veracity and strength that you have used against the Cross-Sound Cable to say that as a protector of the environment, that I am not going to sit idly by and allow that sludge to be dumped.

Second of all—let me finish. And second of all, there is a—the moratorium. There were three moratoriums that were enacted. The last one was just recently enacted by the legislature this year. All of the moratoriums up to this year gave no opportunity for Cross-Sound Cable Transenergy to make those repairs. The current moratorium does allow for certain waivers and exceptions, but you have to go through such a gauntlet that it is highly unlikely that could ever occur. So while on the one hand the State of Connecticut says, you know, it is not buried to the depth requirement—by the way, in no areas of the Long Island Sound does that occur at all, in these seven or eight small areas, and so it is illegal. Transenergy cannot make the repairs even if they wanted to, because the moratorium brings it to a time where no work can be done in the Long Island Sound during the summer months.

So for all intents and purposes, if we were to follow the Attorney General's reasoning here, we would not be able to use the Cross-Sound Cable until at the very least the summer of 2006, and that just makes no sense to me. It is a Catch 22 of the highest order.

Mr. HALL. I think my time is up. I recognize the gentleman from Virginia.

Mr. BOUCHER. Well, thank you very much, Mr. Chairman. And I want to thank all of the witnesses for their informative and spirited testimony here this morning.

Mr. Wood, I have several questions for you. You reference in your testimony that there is a class of cables that crosses the sound that have been in place for something on the order of 30 years, and that there have been some problems in terms of perhaps anchors from barges contacting these cables with the release of chemicals that were a part of the cable. I think benzene perhaps was released. Do you know if this particular cable that we are discussing today, this Cross-Sound Cable, is potentially subject to that kind of problem?

Mr. WOOD. I don't know the engineering of it. I see the cross-section as you do, and it doesn't look like there is a liquid surrounder there, but I am not aware of the full influence of that cable.

Mr. BOUCHER. Would other members of this panel care to comment just very briefly on this, because we have some other questions.

Mr. DONAHUE. Thank you, sir. I will comment briefly. The 1385 cable, as it is commonly known, the old cable, is using a technology that uses oil fluids to help cool the cable. The Cross-Sound Cable, as Mr. Kessel indicated, uses solid dielectric, solid plastic, so there is no oil on this cable.

Second, the 1385 cable was not buried along its entire length, and in the areas where it was buried, it was only buried to a couple of feet. So it has experienced significant problems over the years.

Mr. BOUCHER. Mr. Blumenthal, do you have a contrary opinion to that?

Mr. BLUMENTHAL. I do not. Our objection environmentally to this cable is based on its effect on the aquatic life and the ecosystems of the Sound, and on the fact that substantial blasting, detonation in the seabed of the Sound would be necessary to lay it at the proper depth.

Mr. BOUCHER. So the experience with the 1385 cables is really not what gives rise to Connecticut's environmental concerns at this point.

Mr. BLUMENTHAL. It is not. In fact, on the contrary, sir, the State of Connecticut has favored upgrading the 1385 line to eliminate that problem so that there could be better transmission. And, in fact, the 345 kV line would assist in that transmission if necessary and appropriate from New York to Connecticut or vice versa.

Mr. BOUCHER. Thank you very much.

Mr. Wood, let me return to you. In your testimony you suggest that the Congress might want to consider a change in the Department of Energy's authorities under section 202 that currently enable the Department to order that certain facilities be operated in the event of an emergency. And your proposal, as I understand it, is that this DOE authority could be exercised not just in emergencies, but when it is deemed to be in the national interest to

have certain facilities be operated. Is that a Commission position that are you adopting? Is that a formal recommendation you are making to us? Do you have legislation to recommend to us along those lines?

Mr. WOOD. It is my own recommendation in preparation for this hearing, and reviewing the Secretary's order, the limitations, as General Counsel Otis has pointed out, relate to a specific factual finding of an emergency, and while that is not defined, I think it is a significantly high standard that would not include issues such as general reliability, preparatory actions to take perhaps in advance of a high-electricity useage summer. And so I think that the standards should be made a little bit broader so that the Secretary would have broader authority, but it is my own analysis of the situation, my experience with the Federal Power Act, not that of our Commission nor of the Secretary.

Mr. BOUCHER. Thank you.

Ms. Otis, does the Department of Energy have any comment on this proposal?

Ms. OTIS. Well, I feel as if I should at least return the favor. I guess what I would point the subcommittee to are the siting provisions in H.R. 6 currently, which actually would give this override authority to the FERC in circumstances—in appropriate circumstances, and I do think actually that the circumstance that we have here is a potential candidate for the use of that authority. Obviously no one would want to prejudge whether it would, in fact, be appropriate to use it here, but I think that this is a tool that might assist in resolving disputes like this.

Mr. BOUCHER. Well, thank you very much. I will have to confess that in 22 years here, I have never seen two agencies try to hand each other authority quite the way that you have today. Typically it is the reverse of that. But thank you for your comments.

Well, let me ask you this, Mr. Wood. If Congress were to adopt this recommendation and enable DOE to exercise this authority when it is deemed to be in the public interest and not necessarily in emergency situations, would I be correct in interpreting the proposal to say that DOE's authority would then be preemptive of both State and Federal environmental laws, and that the operation of the facility could go forward if DOE orders it, even though the Army Corps of Engineers, for example, had found that permit conditions had not been met?

Mr. WOOD. I think that the standard and the public interest would have to govern, and I think that would be up to the Secretary and/or the Commission, whoever has that authority, to balance those very important determinations as to whether the public interest requires those State and Federal environmental laws to be overridden.

Mr. BOUCHER. Okay. Thank you.

One final question of you. I wonder if the operation of this cable falls under the reliability guidelines that have been published by the North American Reliability Council.

Mr. WOOD. Are they subject to the——

Mr. BOUCHER. Are they subject to the reliability guidelines published by NERC?

Mr. WOOD. They should be. I think Mr. Museler might be probably a better person to handle that one.

Mr. BOUCHER. Mr. Museler.

Mr. MUSELER. Yes, sir, they would be, and they are in the—on the New York side that cable is—was included in the reliability analysis for the summer of 2004 in accordance with those guidelines, and I believe the same is true of the New England Independent System Operator.

Mr. BOUCHER. Under current law those guidelines are voluntary. They are not enforceable. We have provisions in H.R. 6 that would make these guidelines of a mandatory nature, and enforceable.

Mr. Wood, let me ask you this. Do you believe that in order to enhance system reliability—and I believe you have said that the operation of this particular cable would, in fact, enhance transmission reliability—do you think it would be appropriate for the Congress to enact freestanding, at this point, legislation that would subject this particular cable to the reliability standards published by the NERC?

Mr. WOOD. I think in light of what I heard this morning, H.R. 6, isn't dead and buried. It sounds like it has come back to life. So I would say no.

Mr. BOUCHER. I think that might be an optimistic view.

Mr. WOOD. Well, I sat here and listened. Maybe I am a bit naive, but there is so much in that bill, as you know, and I testified to that last week when we talked about the Alaska natural gas pipeline, one of the other kind of tier 1 issues for me, that really it is just more than making something mandatory. It is a whole panoply of issues that relate to the energy picture. So I would hope that the Congress and particularly the other Chamber could get the full package out like the House did.

Mr. BOUCHER. Let me ask you just a broader question finally. Let's suppose we get to September, and the situation is unchanged with H.R. 6. We don't see any real forward movement. The agreement on a special fund for MTBE programs has not come together, and it really looks like H.R. 6 is going to die for this Congress. Would you, at that point, think that we would be well advised to pass on a freestanding basis that provision of H.R. 6 that would make the NERC rules both mandatory and enforceable?

Mr. WOOD. This is uncharacteristic for me, but can you ask me then. If indeed it is dead, ask me then.

Mr. BOUCHER. Ask you then, if it is dead. We will give you 5 months to consider your answer. That is fine.

Well, thank you all very much, and, Mr. Chairman, thank you.

Mr. HALL. Yes. I think because we have no other members, they have gone to other meetings, and we—without objection, we will have the right to submit questions to you in writing and ask that you answer them within 2 weeks, if you can, of the time you receive them, and they will go into the record here.

And all of you are very important. You are very important to the people that you report to. Your time here is important. The time you took to prepare for this is important, and we recognize we have one terrific panel here.

And, Pat, we will have you back on Oil for Food on Iraq probably next week, so don't get too comfortable over there, wherever you

are. But thank you for your contribution to this subcommittee, to this Congress and to the Nation. Thank you very much.

[Whereupon, at 12:10 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

PREPARED STATEMENT OF HON. HILLARY RODHAM CLINTON, A U.S. SENATOR FROM THE STATE OF NEW YORK

I want to thank Chairman Hall and Ranking Member Boucher for holding this hearing on an issue of importance to the people of New York. Today's hearing will provide an opportunity for everyone to provide their perspective on what I believe has become an unnecessarily controversial issue.

It is my hope that an airing of the facts at today's hearing will propel us towards what I believe to be the only sensible outcome—reenergizing the Cross Sound Cable.

As everyone knows, the Secretary of Energy, Spencer Abraham, issued an order on May 7 that resulted in the shutdown of the cable on May 19.

I believe this decision is shortsighted, and I am extremely concerned that it will put Long Island at risk of power failures as we enter the summer peak demand months.

The Cross Sound Cable has provided proven reliability benefits at a time when a shortage of generation and transmission facilities continues to exist on Long Island and in Southern New England. The Cross Sound Cable transmitted 300 MW of power over the Blackout weekend, enough to turn on the power in about 300,000 homes on Long Island. Since beginning full-time operation on September 1, 2003, the Cross Sound Cable has transmitted nearly one half million megawatt-hours of electricity to help provide sufficient power to prevent more blackouts or brownouts on the island.

Additionally, the extra power from the Cable makes more power available on Long Island to export over another submarine cable into Southwestern Connecticut when needed, thereby making the regional power grid more resilient. The independent grid operators have successfully tested sending power over the Cross Sound Cable to Long Island and then simultaneously sending power from Western Long Island over another submarine cable to Southwest Connecticut. During a severe cold spell in January, Long Island Power Authority was prepared to send 200 megawatts of power over Cross Sound Cable to help Connecticut if needed. Over the short to long-term, the Cable thus allows excess New York-generated power to be transmitted to Connecticut to help prevent blackouts and brownouts.

The cable also provided voltage support for Connecticut when it was operating. In fact, ISO New England, the independent operator of the New England transmission system, made 108 requests to the Cross Sound Cable for help maintaining a steady operating voltage on the Connecticut side during the period when the cable was on.

So it is clear that the Cross Sound Cable helps both Long Island and Connecticut.

But so far, Connecticut has blocked the cable. Environmental impacts are cited as a major factor in Connecticut's opposition. But the fact is that studies of the cable have concluded that it has minimal impacts. The most recent study was conducted last winter while the cable was on. It showed that there were not lasting impacts from when the cable was put in place. And it also showed that operation of the cable did not have any significant environmental impact. So while I take the issue seriously, I just don't think there's much there.

What I find particularly puzzling about this issue is that Connecticut has put the Cross Sound Cable in a bureaucratic bind. Everyone acknowledges that the cable is not currently buried to the depth required in its permits in seven places. That is the basis for Connecticut's charge that the cable is illegal. But at the same time, Connecticut has denied requests from the owners of the Cross Sound Cable to allow them to bury the cable to the proper depth. It hardly seems fair that the company is willing to fix the problem, and Connecticut won't allow them to do it.

And it's hurting New Yorkers. That's why I have introduced legislation in the Senate that would turn the cable back on, and Congressman Bishop has introduced that legislation in the House. I hope that after this hearing, we will be able to move that bill or find some other way to make progress on this issue.

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PREPARED STATEMENT OF HON. GARY L. ACKERMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Good morning Chairman Hall, Ranking Member Boucher, Members of the Subcommittee on Energy and Air Quality. Thank you for holding a hearing on this im-

portant topic, and allowing me to express my strong support for the Cross Sound Cable. The operation of this cable is imperative to provide energy security and reliability to the Northeast.

In the wake of the August 14th blackout, we have discovered that our electricity transmission system is not as reliable as we once believed. The Cross Sound Cable provides reliability benefits to both New York and Connecticut. The cable can allow for electricity to flow in either direction and has been an important tool in stabilizing the region's energy grid. Since it was activated on August 28th, it has been utilized over 100 times to provide stabilization for the electric transmission systems in both states.

The decision to shut down the Cross Sound Cable reduces the supply of electricity to Long Island just as energy prices and the thermometers are spiking.

The State of Connecticut is opposing the operation of the line based on environmental concerns. However, as a result of Secretary Abraham's emergency order to activate the cable, we have seen that the operation of the cable has caused no adverse environmental impacts. In addition, Connecticut opposes operation of the cable because it does not comply with the permit issued by the Army Corps of Engineers. However, the State of Connecticut refuses to allow repairs to be made to ensure compliance or to grant a waiver for the project.

The Secretary of Energy has stated that he will re-energize the cable in the event of an emergency. I am sorry to say that will be too little, too late. The idea that the cable should lay dormant until an emergency occurs, when the operation of the cable may be able to prevent an emergency, is shortsighted and dangerous. New York suffered serious economic losses from the last summer's blackout and our region cannot afford another power failure.

I would like to thank the Subcommittee for its work on this important subject and encourage action on this issue before the lights go out . . . again.

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PREPARED STATEMENT OF HON. ROB SIMMONS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. Chairman, Mr. Boucher, and other members of the Committee, thank you for holding this hearing, and for allowing members from Connecticut to testify on behalf of our home state. This is an issue of great importance to our state.

Mr. Chairman, the 24-mile Cross Sound Cable, operated by Islander East, LLC, extends between New Haven, Connecticut and the former Shoreham nuclear power plant on eastern Long Island, New York. The cable has been a contentious issue in Connecticut for several years beginning with its application to the Connecticut Siting Council.

Connecticut is home to four nuclear power plants—two decommissioned and two operating—as well as numerous coal, gas and electric plants. Connecticut has taken many of the necessary steps to diversify its fuel mix in an effort to provide the resources necessary to try to meet our demand.

That said, there is certainly room for improvement to our system. Southwest Connecticut is in need of an upgrade to its transmission system, as its demand often exceeds supply. Unfortunately the Cross Sound Cable, while delivering energy to Long Island, does nothing to help with the congestion facing Southwest Connecticut. To add insult to injury, the cable was laid improperly and as a result does not meet the depth requirements set by the Connecticut Department of Environmental Protection.

Recognizing the Sound is a treasure to residents of both Connecticut and New York, the members of the Connecticut delegation voiced environmental concerns with respect to the laying of the cable throughout the permitting process. These concerns included the heat emitted from the cable, the electromagnetic field it generates and the disturbing of the sediments contaminated by chemicals and industrial waste. We continue to harbor these concerns today, in addition to those associated with the impact of the cable's failure to meet depth requirements.

U.S. Secretary of Energy, Spence Abraham, energized the cable following the blackout last August that plunged thousands into the dark. The order to energize a cable that did not meet Connecticut permitting requirements overrode a decision by the state—effectively wrestling legal authority from Connecticut.

The cable remained energized until last week when the Secretary issued a finding that it would have no impact on preventing another blackout. Sadly, the good news was short-lived, and now we are holding this hearing and fighting legislation intended to activate the cable indefinitely.

Mr. Chairman, we have a serious situation. Energizing the Cross Sound Cable undermines the sovereignty of the State of Connecticut. As elected representatives, we

have a duty to protect our citizens and the environment in which they live and rely on for their livelihood. The right of the state must be considered in this process.

Thank you for considering my statement. I look forward to working with you on this issue.

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PREPARED STATEMENT OF HON. CAROLYN MCCARTHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I welcome this opportunity to offer my testimony on an issue that is critically important to Long Island: the cross-Sound cable. I am in strong opposition to Secretary Abraham's decision to shut down the operation of the cross-Sound cable and I would urge you to allow permanent use of the cable.

The loss of the cable, and the 330 megawatts of power that it carries, will have severe economic consequences for our region. In addition, without the use of the cable our power on Long Island is simply less dependable.

Power companies are already moving to purchase replacement power and have said that the loss of the cable will result in as much as $38 million dollars in additional costs this year. Most of these new costs will be passed onto consumers. On the Island we already have close to the highest electric prices in the country. With two-dollar gallons of gas and four-dollar gallons of milk, how can we ask Long Islanders to shell out even more cash for rising electricity rates? Long Islanders simply cannot afford this extra cost.

Summer is approaching and this is peak usage season for electricity. Without the use of the cross-Sound cable Long Island power companies will be short critical amounts of power. The loss of the cable will eliminate the flexibility power companies need to respond to the increase in usage during the summer months or during an emergency. This could result in many power outages and brownouts across Long Island this summer as well as a slower response times if an emergency should occur. This cable is insurance and a type of safety valve when it comes to dependable and reliable power on Long Island.

The Dept of Energy has said it was not able to conclude that the blackout, which hit the northeast, would have been prevented on Long Island if the cable were open and running. That may or may not be the case, but what we DO know is that keeping the cable open permanently will certainly prevent other types of blackouts, as well as help prevent sharp spikes in energy prices that will occur should this cable stay off. After living through last summer's blackout why would anyone want to make it harder for any region in the country to get power when it's needed?

Connecticut authorities have argued that the cable causes environmental damage. This is simply not the case. The truth of the matter is—when the cable line was built it caused minor and temporary damage to shellfish habitat. Today the damage has naturally been repaired and the actual running of the cable does not cause any type of environmental damage. The State and jurisdictional agencies involved with this issue have determined that the use of this cable will not have any adverse environmental impact.

Environmental groups on Long Island are not exactly silent when they see something harmful being done to the environment and yet no group has come out against the use of this cable. However, environmental groups have spoken out against the EPA's proposed dredge spoils dumping in the Long Island Sound, which Connecticut supports. These dredge spoils will create an ecological hazard far worse than any threat from the cable and if Connecticut officials truly cared about the environment or the health of the Sound then they would be against this dredge dumping proposal.

Another argument of Connecticut authorities against the use of this cable is that the it presents a navigational hazard because it is not buried deep enough at seven locations. The reason for this is that when the cable was being laid it was found that in some places, going a few feet deeper would cause environmental damage. There has not been one cited navigational problem from these few areas where it is a small number of feet short of being buried to regulation. Connecticut officials are demanding the cable be idle until those areas are buried deep enough but they have banned repairs that would make the cable meet the requirements.

I urge quick and immediate action to keep the cross-Sound cable open permanently so that every time there is an emergency or depletion in supply we do not have to wait for a bureaucratic process to pan out before we see relief. Allowing a perfectly good cable to lie on the bottom of the Long Island Sound unused is absolutely preposterous when it could greatly benefit many people in our region. Long Islanders deserve reliable energy at reasonable prices and allowing the permanent opening of this cable will provide this.

Thank you, Mr. Chairman for holding this hearing today and for giving me the opportunity to submit testimony.

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PREPARED STATEMENT OF ELIOT SPITZER, NEW YORK STATE ATTORNEY GENERAL

It is now nine months since the August, 2003 blackout demonstrated the vulnerability of the Northeast's electric grid. As thermometers throughout the Northeast begin to move past the 80 degree mark, last summer's outage is on all of our minds.

For decades, the nation's power generators, high voltage bulk transmission lines and distribution systems have been cobbled together into a patchwork network. The August 2003 blackout revealed that the electric grid is fragile at its seams. It also showed us the vast number of people and businesses who rely upon the system—within New York's borders, throughout the Northeast and across the border in Canada. It highlighted our responsibility to strengthen the grid, to ensure that we do not have another massive power outage.

To that end, I support continued operation of the Cross Sound cable between Long Island and Connecticut.

In order to prevent future outages, on August 28, 2003, the Secretary of Energy appropriately and lawfully ordered the cable into operation. To strengthen the electric grid immediately, the Secretary should order the continued operation of the cable.

THE CONTINUING VULNERABILITY OF THE BULK POWER TRANSMISSION GRID IS AN EMERGENCY REQUIRING ACTION BY THE SECRETARY OF ENERGY

Electricity is supplied in North America through large interconnected networks, extending in a grid across the United States and Canada. This grid is not only more efficient than independent generator-consumer transmission systems, but is also generally more stable and reliable, since the system as a whole can absorb disturbances that would otherwise cause local power outages. The *sina qua non* of the grid's functioning, however, is adequate transmission capacity.

Because the Cross Sound cable is one of only six power links connecting Long Island to the mainland, it is critical to ensure adequate transmission capacity and reliable power on Long Island. Sufficient power supply is important not only for the well-being of Long Island residents, but, since the effects of severe local deficits ripple through the network, for the region as a whole. An interconnected system can spread the effects of disturbances over a wide area, quickly restoring balance in the region where the problem originates without compromising the system as a whole. This can only work, however, when there is sufficient transmission capacity.

The August 14, 2003, blackout is illustrative. The Report of the U.S.-Canada Power System Outage Task Force emphasizes the importance of transmission capacity in explaining why that blackout did not cascade further. "Higher voltage lines and more densely networked lines . . . are better able to absorb voltage and current swings and thus serve as a barrier to the spreading of a cascade. As seen in the [August 14, 2003 blackout . . . where] . . . there were fewer lines, each absorbed more of the power and voltage surges and was more vulnerable to tripping.[1]

Of course, no two power crises are exactly alike. We do not know whether there will be a repeat of last summer's cascading blackout, much less when or where a transformer might fail, a line might short or lightening might strike. As the Wall Street Journal summarized, the Task Force's Final Report "offers little reason to believe the electric system is hardier today" than it was on August 13, 2003.[2] Given that the grid is not demonstrably more robust than it was on August 14, 2003, we must do what we can to ensure that this summer does not bring another massive blackout. Maintaining the operation of the Cross Sound cable provides a means of mitigating the risk of another such outage.

THE SECRETARY OF ENERGY HAS THE AUTHORITY TO ORDER CONTINUED OPERATION OF THE CABLE

The Secretary's authority under the Power Act applies both when the emergency is an immediate threat to the power supply and where the power supply is in an extended period of insufficiency. Clearly, such an insufficiency exists. Our electric transmission grid is as vulnerable to another such crisis as it was on August 14,

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[1] Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations at 75-77.

[2] Rebecca Smith, "Blackout Could Have Been Avoided," *The Wall Street Journal,* April 6, 2004, at A6; *see also* Rebecca Smith, "Faults Still Plague Electric System as Peak Summertime Use Nears," *The Wall Street Journal,* April 13, 2004, at A1 ("As the summer months approach, North America's electricity system remains frail and many of the shortcomings that contributed to a massive failure eight months ago have yet to be fixed.")

2003. This vulnerability constitutes an emergency from which the grid will not be relieved until the causes are rectified, and the only way to accomplish this is through the addition of robust transmission capacity.

The Federal Power Act authorizes the Secretary of Energy to act to protect the power supply during an emergency threatening or disrupting the adequate operation of the electric grid.[3] The Act also transferred to the Secretary the authority previously vested in the Federal Power [now Federal Energy Regulatory] Commission[4] by § 824a(c), which provides in pertinent part, "whenever the Commission determines that an emergency exits . . . the Commission shall have authority . . . to require by order such temporary connection of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest."[5]

The Department of Energy regulations implementing § 824a(c) set out several definitions of "emergency," among them "extended periods of insufficient power supply" or "a regulatory action which prohibits the use of certain electric power supply facilities."[6] Given the fragile nature of the Northeastern electric transmission grid and the regulatory obstacles that are keeping the Cross Sound cable from operating, the Secretary of Energy clearly has authority to apply § 824a(c) to order the cable into operation. Moreover, the environmental issues raised in connection with the operation of the cable are without merit.

On August 14, 2003, the Cross Sound cable had been physically complete for over a year but was not in operation due to permitting issues. Within hours of the August 2003 blackout, the Honorable Spencer Abraham, United States Secretary of Energy, ordered the immediate activation of the cable to alleviate the power supply emergency in both New York and Connecticut. While the original order was scheduled to expire on August 31, 2003, on August 28, 2003, Secretary Abraham again invoked his authority and directed that the Cross Sound cable continue operating until the he makes a formal determination that the current emergency has passed.

Just a week and a half ago, on May 7, 2004, citing the findings in the U.S.-Canada Power System Outage Task Force Report, Secretary Abraham allowed the Cross Sound cable to be shut down.[7] I do not agree with this outcome.

While, as the Secretary of Energy stated in his May 7 order, the Task Force Report did not "identify any particular role that the Cross Sound Cable would have played in stopping the spread of the outage," the Report also did not identify any reason to believe that the grid is any less vulnerable than it was last August.[8] This continuing vulnerability of the Northeast's transmission grid to disruptions and even blackouts is an emergency that the Secretary of Energy may and should address under the Federal Power Act.[9]

CONCLUSION

In the words of the Connecticut Siting Council, operation of the Cross Sound cable can be expected to "enhance the inter-regional electric transmission infrastructure . . . [and] improve the reliability and efficiencies of [the interconnected] systems by providing generation resources that can be drawn upon in the event of changes in electricity demand or supply."[10] The system degradation that results from even temporarily blocking the flow of electricity through the Cross Sound cable is a substantial harm to the people of New York and the Northeast and is contrary to the public interest.

Congress should act quickly to ensure that the Secretary of Energy orders the Cross Sound cable back into operation.



[3] *Id.*
[4] 42 U.S.C.A. § 7151(b).
[5] 16 U.S.C.A. § 824a(c).
[6] 10 C.F.R. § 205.371.
[7] Department of Energy Order No. 202-03-4, May 7, 2004.
[8] *Id.*
[9] 16 U.S.C.A. § 824a(c).
[10] Cross-Sound Cable Company, LLC application for a Certificate of Environmental Compatibility and Public Need, Docket No. 208 (Connecticut Siting Council, January 3, 2002), available at http://www.ct.gov/csc/ lib/csc/Fof208.doc.