Cross-Sound

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO:
ATTENTION OF:

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 Environmental 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

FOOTNOTE 4

Cross-Sound

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

January 6, 2003

Mr. James P. Nash, Project Director
Cross-Sound Cable Company, LLC
110 Turnpike Road, Suite 300
Westborough, MA 01581

Dear Mr. Nash:

We are in receipt of a copy of your statement to the press dated January 3, 2003 entitled "Cross-Sound Cable Company, LLC, Revised Statement Regarding Filing For Clarification with the Connecticut Siting Council". Please be advised that your statement mischaracterizes DEP's position concerning the operation of your cable in its current condition under the terms and conditions of our permit #200102720-MG. Let me be clear – until the cable is at its authorized depth it would be a violation of the permit to operate the cable.

The specious argument presented in your statement is misleading. While our letter of 12/23/02 states that we "are in agreement with your conclusion that EMF and temperature variations associated with the operation of the cable at these coverage depths at locations within the confines of the Federal Navigation Channel would not be expected to impact fisheries resources" we go on to state clearly in the following sentence that "this conclusion, however does not negate the permit condition that requires burial in the federal navigation channel to 6' below the seabed or –48' MLLW whichever is deeper".

There's a subtle but important distinction to be made here. While we may not have any environmental concerns with the operation of the cable in its current condition, we do have <u>significant</u> procedural concerns. The permit authorization is <u>very</u> specific with respect to the depth requirements that must be achieved under the permit. The cable as it currently exists does not meet those requirements. Until your cable fully complies with those requirements, or unless those conditions are modified (which cannot be done as long as the moratorium is in effect) operation of the cable would be inconsistent with the permit and would constitute a permit violation. In her letter to you dated 7/22/02, Deputy Commissioner Jane Stahl clearly articulates the DEP position that " operation of the cable before the project is complete or compliant would not be consistent with the existing authorization".

In our opinion your options are limited at this point. Either get the cable to the authorized depths with methods that are consistent with DEP's existing permit authorization, or wait until the moratorium expires when you can seek a modification of the permitted methodology or channel depth requirements and operate the cable after any modified conditions are met.

Sincerely,

Charles H. Evans
Director
Office of Long Island Sound Programs

CHE/lv
cc: Connecticut Siting Council

Cross-Sound

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

December 23, 2002

James P. Nash
Project Director
Cross Sound Cable Company, LLC
110 Turnpike Road, Suite 300
Westborough, MA 01581

Re: Review of Supplemental Installation Activities for New Haven Harbor Federal Navigation Channel dated November 18, 2002
Submitted to Charles Evans, Director, DEP Office of Long Island Sound Programs by the Cross Sound Cable Company, LLC

Dear Mr. Nash:

This Office has reviewed the above-referenced work plan dated November 18, 2002 and would like to take this opportunity to both comment on the plan and review the overall status of the cable installation project.

The work proposed in the November 18, 2002 plan is in furtherance of the cable installation authorized through permit no. 200102720-MG issued by the Department on March 17, 2002. The work is proposed to bury the cable to the required depth of -48' MLLW at the seven "soft" locations within the Federal Navigation Channel as shown on the map dated November 15, 2002 You will recall that the –48' MLLW depth was specified by the United States Army Corps of Engineers (ACOE) as the requisite depth to accommodate navigation concerns. You will also recall that you represented that you could meet that specified depth with the technology proposed in the initial application and agreed to a permit condition requiring such depth. As further explained below, we have concluded that 1) the methodology proposed to reach the required depth is inconsistent with the installation method currently authorized, and 2) the level of environmental impact from that methodology will be greater than that anticipated from use of the authorized remote operated jetting tool.

The submitted work plan proposes the use of air-jetting tools. Review of Attachments 2 and 3 entitled "WATER/AIR JETTING TOOL" and "DISCHARGE PIPE EXTENSIONS" dated October 31, 2002 and the attached analysis of sediment dispersion prepared by W. Frank Bohlen dated November 18, 2002 states "*...the pipe is surrounded by two manifolds, one feeding air from a barge mounted compressor and the other feeding water from a barge mounted pump. The resulting combination of water jet agitation of the sediment column and air mediated jetting results in the removal of sedimentary materials from the sea-bed and their discharge at a point at or near the surface of the water.*" The methodology as proposed is a combination of water jetting to fluidize and loosen sediments and air lift hydraulic dredging with sidecasting to remove the sediment from the immediate work area. Unlike the jetting technology authorized in the issued permit; the air lift hydraulic dredging method propels the excavated sediments into the upper water column. This method would be expected to create turbidity throughout the water

column resulting in greater dispersion of sediments and a wider area of impact than that resulting from the authorized jetting method. While the initial cable installation using the jet plow was completed over a two week period, you estimate that the work currently proposed will take approximately 25 work days over a 4 to 6 week period. In addition, the work currently proposed will require the use of spuds and anchors to hold the work platforms in place, unlike the initial cable installation which was performed with a self positioning ship such that the only direct contact with the seafloor was from the jetting tool.

The anticipated increase in turbidity, longer work timeframe and use of spuds and anchors lead us to conclude that the November 18 proposal is materially different in both its mechanics and environmental impacts from the jetting methodology currently authorized by your permit. These differences are significant enough that we cannot consider the proposal to be consistent with the permit and further, cannot authorize its use as a de minimis change to the permit. To employ this methodology, you would need to seek authorization through a new permit or certificate of permission pursuant to Connecticut General Statutes sections 22a-361 and 22a-363b, respectively. The type of authorization necessary is dependent on the nature of the proposed work. In addition, it is as of yet unclear how you intend to meet the authorized depth at the so-called "hard" areas. To date it appears that you will either need to institute an additional not as yet authorized methodology or seek a wavier of the authorized depth. While the former, would as above, require authorization from this Office, the latter would first require action by the ACOE followed by any necessary action by this Office.

As you are aware, the moratorium established by Public Act 02-95 prohibits this Department from rendering any final decisions on any applications relating to electric utility crossing of Long Island Sound. Therefore, we are prohibited from issuing a final decision on a new application for a permit or a certificate of permission for Cross Sound Cable until after the moratorium expires. However, an application may be submitted at any time and this Office will review an application for a modified methodology in preparation for making a final decision upon expiration of the moratorium in June of 2003. Should you decide to pursue an alternative methodology such as that proposed in your plan of November 18 and as might be required for the "hard" areas, there are several issues which must be addressed to enable us to review the potential scope of adverse impacts from the proposed method and the consistency of the method with statutory standards and policies. As relates to the "soft" areas, an analysis of the effects on sediment dispersion of the 1000 gallon per minute slurry discharge combined with the 500 cubic feet per minute air flow from the air lift pipe must be conducted. Issues relevant to the "hard" areas will be dependent on the methodology that you propose.

Finally, as concerns the issue of burial depth, it is our understanding from our review of your July 19, 2002 report entitled, CROSS SOUND CABLE PROJECT Post-Installation Cable & Obstruction Survey, New Haven Harbor, that cable coverage values (interpolated) vary from 1.2' to 9.5' at the center of the cable installation path at the dive sites investigated. Average cover at Areas 2, 8 and 9 are 2.7', 3.2' and 5.0', respectively. In your letter of July 24, 2002 responding to Deputy Commissioner Stahl's letter of July 22, 2002, you assert that electromagnetic fluctuation (EMF) and temperature variations would be negligible at coverages of less than 6' referring to both the Siting Council record and the opinions of Dr. William H. Bailey and Dr. Roger Mann. We have consulted with National Marine Fisheries Service staff and DEP, Marine Fisheries staff

on this matter and are in agreement with your conclusion that EMF and temperature variations associated with operation of the cable at these coverage depths at locations within the confines of the Federal Navigation Channel would not be expected to impact fisheries resources. This conclusion, however, does not negate the permit condition that requires burial in the federal navigation channel to 6' below the seabed or -48' MLLW whichever is deeper, which condition was predicated on present and future navigation considerations. Our review of the July 19, 2002 report reveals that with the exception of Dive site 3, none of the sites evaluated meet the -48' MLLW and in most cases –48 MLLW is the required depth because it is deeper than the depth that would be achieved with 6' of cover. Again, any further discussion of required depth must be addressed to the ACOE.

If you have any questions regarding this letter or our review of your proposed plan, please contact Robin Bray, Micheal Grzywinski or myself at 860-424-3034. Thank you.

Sincerely,

Charles H. Evans

Charles H. Evans
Director
Office of Long Island Sound Programs

cc: Bruce McDermott, Wiggin & Dana
Diane Ray, ACOE
Michael Ludwig, NMFS
John Volk, CT DOA, BOA
Mark Johnson, DEP Fisheries Division

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Sincerely,

Thomas L. Koning
Colonel, Corps of Engineers
District Engineer