

126 FERC ¶ 61,297
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Cross-Sound Cable Company, LLC

Docket No. ER09-613-000

ORDER ACCEPTING IN PART AND DENYING IN PART TARIFF AMENDMENTS
AND GRANTING LIMITED WAIVER

(Issued March 31, 2009)

1. On January 30, 2009, Cross-Sound Cable Company, LLC (Cross-Sound) submitted, pursuant to section 205 of the Federal Power Act (FPA),¹ a new Attachment Z to Schedule 18 of the ISO-New England (ISO-NE) Open Access Transmission Tariff (OATT) and to its Market Services Tariff to incorporate references to the business practice standards developed by the North American Energy Standards Board's (NAESB) Wholesale Electric Quadrant (WEQ) in compliance with the directives of Order No. 676-C.² Cross-Sound also requests waiver of limited portions of the revised business practice standards developed by NAESB's WEQ. For the reasons discussed below, the Commission grants in part, and denies in part, Cross-Sound's request for waiver and accepts in part the revised tariff sheets to the ISO-NE OATT and Market Services Tariff, effective December 1, 2008, as requested.

¹ 16 U.S.C. § 824d (2006).

² *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-C, 73 Fed. Reg. 43,848 (July 29, 2008), FERC Stats. & Regs. ¶ 31,274 (2008).

Background

2. On April 25, 2006, the Commission issued Order No. 676,³ which amended the Commission's regulations under the FPA to incorporate by reference certain standards promulgated by NAESB's WEQ.⁴ As an alternative to complying with the standards, Order No. 676 gave public utilities the option of applying for a waiver of some or all of the standards by filing a request explaining the reasons why the waiver should be granted. Shortly after Order No. 676's issuance, ISO-NE filed a request for a limited waiver of the standards with respect to its Regional Network Service and Through or Out Service, based primarily on the fact that point-to-point transmission services are not offered over New England's regional transmission facilities. On November 16, 2006, the Commission granted ISO-NE's request, finding that ISO-NE's "business model and regional transmission services differ from the business model and transmission services described in the *pro forma* OATT, on which the WEQ standards are generally based," and also finding that the request was reasonable.⁵

3. On July 21, 2008, the Commission issued Order No. 676-C, which revised regulations to incorporate by reference the latest version (Version 001) of certain standards adopted by the WEQ of the NAESB. Specifically, Order No. 676-C required transmission providers to: (1) revise the Open Access Same-Time Information Systems

³ *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676, FERC Stats. & Regs., ¶ 31,216 (2006), *reh'g denied*, Order No. 676-A, 116 FERC ¶ 61,255 (2006), *amended*, Order No. 676-B, FERC Stats. & Regs. ¶ 31,246 (2007), *revised*, Order No. 676-C, 73 Fed. Reg. 43,848 (July 29, 2008), FERC Stats. & Regs. ¶ 31,274 (2008), *order on clarification and reh'g*, Order No. 676-D, 124 FERC ¶ 61,317 (2008).

⁴ Order No. 676, FERC Stats. & Regs. ¶ 31,216 at P 1, 19.

⁵ *ISO New England Inc.*, 117 FERC ¶ 61,195, at P 14 (2006). Specifically, ISO-NE has obtained waivers with respect to Regional Network Service and Through or Out Service from the following WEQ-001 standards: (1) Standards 001-2.1 through 001-2.1.14 (Attribute Values Defining the Period of Service); (2) Standards 001-2.2 through 001-2.2.2 (Attribute Values Defining Service Class); (3) Standards 001-2.3 through 001-2.3.2 (Attribute Values Defining Service Types); (4) Standards 001-4 through 001-4.27 (On-Line Negotiation and Confirmation Process); (5) Standards 001-5 through 001-5.6 (Transmission Provider Requirements and Transmission Customer Requirements); (6) Standards 001-8 through 001-8.3.2 (Requirements for Dealing with Multiple, Identical Transmission Service Requests); (7) Standards 001-9 through 9.8.1 (Requirements for Dealing with Redirects on a Firm Basis); and (8) Standards 001-10 through 001-10.8.6 (Requirements for Dealing with Redirects on a Non-Firm Basis).

(OASIS) business practice standards and communications protocols; (2) revise four business practice standards relating to reliability issues; (3) add new standards on Transmission Loading Relief (TLR) for the Eastern Interconnection; (4) add new standards for public key infrastructure (PKI); and (5) add a new OASIS implementation guide.⁶ Like Order Nos. 676, Order No. 676-C contained provisions for an entity to seek a waiver from its requirements.⁷

4. On September 30, 2008, ISO-NE requested a limited waiver of the new WEQ standards that address matters relating to Point-to-Point Service and new WEQ standards for invoking TLR procedures. ISO-NE explained that the circumstances that resulted in the Commission granting ISO-NE a waiver of certain business practice standards established in Order No. 676 continue to support certain waivers. Specifically, ISO-NE requested waiver of the new Standard 001-10.8.7, which constitutes a new requirement for dealing with redirects on a non-firm basis; Standards 001-11 (which includes 001-11 through 001-11.7.1) on resales for Point-to-Point Service; Standards 001-12 (which includes 001-12 through 001-12.5.2) on transfers of Point-To-Point Service; and the new WEQ-008-1, which governs TLR Procedures. On November 20, 2008, the Commission granted ISO-NE's request.⁸ On October 29, 2008, ISO-NE filed tariff sheets incorporating WEQ Version 001 standards by reference into the ISO-NE OATT which were accepted by the Commission to become effective as of December 1, 2008.⁹

Compliance Filing

5. Cross-Sound proposes in its compliance filing to modify certain sections of the NAESB WEQ Version 001 standards and requests a limited waiver of certain WEQ business practice standards incorporated by reference into the Commission's regulations and which public utilities are required to incorporate by reference into their OATTs as discussed below. Cross-Sound argues that, due to the nature of service it provides, the WEQ standards at issue here do not apply to it.

⁶ Order No. 676-C, FERC Stats. & Regs. ¶ 31,274 (2008).

⁷ Order No. 676-C, FERC Stats. & Regs. ¶ 31,274 at P 19, 84.

⁸ *ISO New England Inc.*, 125 FERC ¶ 61,201 (2008).

⁹ *ISO New England Inc.*, 125 FERC ¶ 61,275 (2008).

Interventions, Protests or Comments

6. Notice of Cross-Sound's January 30, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 7,417 (2009), with comments, protests and interventions due on or before February 20, 2009. ISO-NE filed a timely motion to intervene. No protests or adverse comments were filed.

Discussion

Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motion to intervene makes ISO-NE a party to the proceeding.

A. Proposed Deviations from Order No. 676-C

8. In Order Nos. 676 and 676-C, the Commission clarified that, to the extent that a public utility's OASIS obligations are administered by an independent system operator (ISO) or a regional transmission operator (RTO), the public utility will not be required to modify its OATT to include the WEQ OASIS-related standards.¹⁰ Version 001 of the WEQ Standards, incorporated by reference into the regulations in Order No. 676-C, contains five WEQ Standards related to OASIS or PKI administration: WEQ-001; WEQ-002; WEQ-003; WEQ-012; and WEQ-013. The Commission accepts Cross-Sound's request for waiver of these standards except as noted below.

9. Cross-Sound contends that, as the New England RTO, ISO-NE plays a primary role in operating and maintaining the OASIS pursuant to section II.5 of the ISO-NE OATT, leaving the Cross-Sound Cable¹¹ subject to the operational control, scheduling and maintenance coordination of ISO-NE. However, Cross-Sound explains that it also has OASIS administrative responsibilities, and collaborates and coordinates with ISO-NE

¹⁰ Order No. 676, FERC Stats. & Regs. ¶ 31,216 at P 20; Order No. 676-C, FERC Stats. & Regs. ¶ 31,274 at P 10.

¹¹ Cross-Sound owns Cross-Sound Cable, a 24-mile, 330 MW bi-directional high voltage direct current transmission link between New Haven, Connecticut and Shoreham, New York. Reservation of transmission service over the Cross Sound Cable is obtained pursuant to Schedule 18 and the attachments to Schedule 18 of the ISO-NE OATT and in coordination with ISO-NE and the New York Independent System Operator; this proceeding addresses the Cross-Sound Cable's operation under the ISO-NE OATT.

through participation in the New England Power Pool's (NEPOOL) OASIS Working Group.

10. Based on these factors, Cross-Sound indicates that it has inserted conditional language indicating that "to the extent that these requirements therein apply to Cross Sound Cable" WEQ-001, WEQ-002, WEQ-003 and WEQ-013 are incorporated by reference into Attachment Z to Schedule 18.

11. With respect to WEQ-012, Cross-Sound states that while Order No. 676-C¹² includes language that entities are required to include in their tariffs, Order No. 676-D does not require parties to implement the PKI standards for Internet encryption systems in New England.¹³ Therefore, Cross-Sound explains, in accordance with the Commission's direction in Order No. 676-D, it has not incorporated WEQ-012 by reference into Attachment Z to Schedule 18.

12. We reject Cross-Sound's proposed waiver from WEQ-012 and we disagree with Cross-Sound's interpretation of Order No. 676-D. While Order No. 676-D states there is no express requirement to use PKI, in the event the entity in question chooses to do so, the Commission does require PKI standards to be met. As the Commission explained in Order No. 676-C, the PKI standards have been created to ensure greater security for business transactions taking place over the Internet. While Order No. 676-C does not require public utilities to use PKI for all business transactions over the Internet,¹⁴ the Commission included these standards in the general set of standards to be implemented by October 1, 2008.¹⁵ To receive waiver from these standards, Cross-Sound would have to establish that it would never use PKI and neither would ISO-NE which has operational control of Cross-Sound's facilities. Cross-Sound has not adequately shown that neither it nor ISO-NE as the RTO, will never need to establish a secure Internet encryption system. For example, Cross-Sound has not offered any evidence that ISO-NE does not schedule or reserve energy service or effectuate energy transactions on its OASIS or that ISO-NE

¹² See Cross-Sound Transmittal at 5, citing Order No. 676-C, FERC Stats. & Regs. ¶ 31,274 at P 83.

¹³ Citing Order No. 676-D, 124 FERC ¶ 61,317 at P 9.

¹⁴ In addition, WEQ-012 neither requires those who wish to contract with an authorized Certification Authority to obtain a PKI compliant certificate to enter such contracts by October 1, 2008, nor does it preclude business transactions over the Internet by public utilities that do not involve authorized Certification Authorities. *Id.* P 10.

¹⁵ Order No. 676-C, FERC Stats. & Regs. ¶ 31,274 at P 80.

does not designate or undesignate resources via OASIS.¹⁶ Nor have they offered any other arguments that indicate that ISO-NE has obtained waivers with respect to PKI. Accordingly, because operation and control of the Cross-Sound transmission facilities are under the operational control of ISO-NE, Cross-Sound must comply with Standard WEQ-012 when it is applicable to ISO-NE's operations.

13. Thus, we reject Cross-Sound's proposed variation and direct Cross-Sound to file, within 30 days of the date of this order, a further compliance filing reflecting the WEQ-012 standards. This determination is without prejudice to Cross-Sound re-applying for waiver of specific standards, supported by a detailed explanation of why waiver would be appropriate.

B. Request For Limited Waiver Of Certain WEQ Standards

14. Cross-Sound requests a limited waiver of certain WEQ standards incorporated by reference into the Commission's regulations and which public utilities are required to incorporate by reference into their OATTs, as discussed below. Cross-Sound argues the WEQ standards at issue here are inapplicable due to the nature of service it provides.

Standard 001-4.1

15. First, Cross-Sound requests waiver of Standard 001-4.1 requiring that all reservations and price negotiations shall be conducted on OASIS. Cross-Sound points out that good cause exists to grant a waiver of this standard because transmission service over the Cross Sound Cable is provided in accordance with a Commission-approved process rather than exclusively through the OASIS.¹⁷ Cross-Sound argues that the process provided for the initial allocation of firm transmission rights over the Cross Sound Cable through an open season mechanism approved by the Commission.

16. We agree. Because Cross-Sound does not provide the transmission service addressed by these standards, we grant Cross-Sound's request for a waiver of Standard 001-4.1.

¹⁶ The PKI standards do not simply apply to the ISO-NE's OASIS applications. They apply to other issues arising from internet usage, such as confidentiality, authentication, integrity and non-repudiation security services which are contemplated in WEQ-012.

¹⁷ *TransEnergie U.S. Ltd.*, 91 FERC ¶ 61,230 (2000).

Standards 001-9.1 through 001-10.8.7

17. Second, Cross-Sound requests waiver of WEQ Standards 001-9.1 through 001-10.8.7 that deal with a transmission customer's right to request modifications to points of receipt and/or points of delivery (including source or sink, where required) on a firm or non-firm basis for a confirmed point-to-point firm transmission service reservation. Cross-Sound explains these standards effectively assume that redirects to or from alternate points of receipt or delivery occur over a transmission network or grid while their own cable is a single path, thus severely limiting scenarios for redirects.¹⁸ Therefore, to avoid customer confusion, Cross-Sound requests waiver from these standards.

18. We agree with Cross-Sound's reasoning and grant it waiver of WEQ Standards 001-9.1 through 001-10.8.7.

Standard WEQ-004

19. Third, Cross-Sound requests partial waiver of WEQ-004. Cross-Sound explains that while Standard 004 states that it applies in part to transmission service providers such as Cross-Sound, the only mention of transmission service providers is in the main section of Standard 004 in reference to the definition of Approval Entity. There transmission service providers are mentioned as one of several possible entities that may have approval rights over Arranged Interchange. However, in the New England RTO, Cross-Sound has no authority for matters affecting the identification, quantification or approval of net interchange transactions as contemplated by WEQ-004 and therefore does not qualify to be an Approval Entity. Rather, ISO-NE is the net interchange authority and the Approval Entity on behalf of the New England region. But because the appendices contain responsibilities applicable to transmission service providers, Cross-Sound requests waiver of Standard 004 except to the extent it has responsibilities applicable to transmission service providers as delineated in the appendices (004-A through 004-D) of Standard 004.

20. We agree with Cross-Sound's reasoning and grant this partial waiver of Standard 004, as requested by Cross-Sound.

Standards WEQ-005, WEQ-006 and WEQ-007

21. Fourth, Cross-Sound requests waiver of WEQ Standards: WEQ-005 Area Control Error (ACE) Equation Special Cases Standards; WEQ-006 Manual Time Error

¹⁸ Section 8 of Schedule 18 of the ISO-NE OATT, as approved by the Commission, provides for the process and conditions for changing the point(s) of receipt and point(s) of delivery of transmission service over the Cross Sound Cable.

Correction Standards; and WEQ-007 Inadvertent Interchange Payback Standards. Cross-Sound argues that these standards apply only to balancing authorities of which Cross-Sound is not one under the New England RTO, and therefore, the waiver does not appear to apply.

22. We agree that Cross-Sound does not act as a balancing authority and does not currently provide any of the functions addressed by these standards, thus we grant Cross-Sound's request for waiver.

Standard WEQ-008

23. Fifth, Cross-Sound requests waiver of NAESB's new standards governing TLR under WEQ Standard 008 initiated to complement the NERC TLR process. Cross-Sound argues ISO-NE does not initiate TLR requests or utilize TLR-like procedures, but rather implements specific rules in the ISO-NE OATT, as accepted by the Commission, that govern how ISO-NE schedules and curtails transactions.¹⁹ Because ISO-NE does not use TLR or TLR-like procedures, Cross-Sound requests that the Commission grant waiver from this requirement for the same reasons.

24. We agree that ISO-NE does not initiate the type of procedures addressed by this standard, and, therefore, grant Cross-Sound's request for a waiver of WEQ-008.

Standard WEQ-011

25. Cross-Sound seeks waiver of Gas/Electric Coordination Standard WEQ-011 to the extent it applies to Cross-Sound. Cross-Sound explains that it operates the Cross Sound Cable and provides transmission service over it pursuant to Schedule 18 of the ISO-NE OATT. Cross-Sound states that it does not own any power plants or any natural gas pipelines and does not participate in the natural gas market and therefore, the procedures required by WEQ Standard 011-1.2 do not apply to Cross-Sound. Moreover, since ISO-NE acts as the balancing authority and reliability coordinator for the New England region and is responsible for the type of coordination and communication that is contemplated in WEQ Standard 011-1.6, Cross-Sound also argues that it is not an entity described by WEQ Standard 011-1.6. Thus, Cross-Sound concludes that the procedures required by WEQ Standard 011 do not apply to Cross-Sound.

26. We find that Cross-Sound's request for waiver of the specific standards discussed above is reasonable, and we will grant the requested waiver for WEQ Standard WEQ-011.

¹⁹ *ISO New England Inc.*, 125 FERC ¶ 61,201, at PP 14 (2008).

C. Effective Date

27. Cross-Sound respectfully requests that the Schedule 18 changes be made effective as of December 1, 2008, rather than the October 1, 2008 effective date specified in Order No. 676-C. Since a December 1, 2008 effective date coincides with the effective date of ISO-NE's tariff revisions incorporating WEQ Version 001 standards, we accept Cross-Sound's request.

The Commission orders:

(A) Cross-Sound's proposed tariff amendments are hereby accepted in part, to be effective December 1, 2008, as requested, and denied in part as discussed in the body of this order.

(B) Cross-Sound's request for limited waiver is hereby granted as discussed in the body of this order.

(C) Cross-Sound is hereby directed to make a compliance filing within 30 days of the date of issuance of this order, as discussed in the body of this order

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.