

145 FERC ¶ 61,110
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

ISO New England Inc.
Dominion Energy Marketing, Inc.

Docket Nos. ER13-2149-000
EL13-72-000

ORDER ACCEPTING COMPLIANCE FILING

(Issued November 7, 2013)

1. On August 13, 2013, ISO New England Inc. (ISO-NE) submitted proposed revisions (Compliance Revisions) to the ISO-NE Transmission, Markets and Services Tariff (Tariff) to comply with a June 14, 2013 Commission order, *Dominion*.¹ In *Dominion*, the Commission instituted a proceeding in Docket No. EL13-72-000, under section 206 of the Federal Power Act (FPA),² directing ISO-NE to submit Tariff revisions allowing resources to submit a filing pursuant to section 205 of the FPA³ to recover fuel and other variable costs in extraordinary circumstances where they are dispatched beyond their day-ahead schedules to meet critical reliability needs. In this order, we will accept ISO-NE's Compliance Revisions, effective June 25, 2013, the refund effective date established in *Dominion*.⁴

¹ *Dominion Energy Marketing, Inc.*, 143 FERC ¶ 61,233, at P 25 (2013) (*Dominion*).

² 16 U.S.C. § 824e (2012).

³ 16 U.S.C. § 824d (2012).

⁴ The Commission established the refund effective date in Docket No. EL13-72-000 as the date on which the notice of the proceeding was published in the *Federal Register*, which was June 25, 2013. *Dominion Energy Marketing, Inc. and ISO New England Inc., Notice of Initiation of Proceeding and Refund Effective Date*, Docket

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I. Background

2. On April 15, 2013, Dominion Energy Marketing, Inc. (Dominion) submitted, in Docket No. ER13-1291-000, a section 205 filing, as allowed under ISO-NE's Tariff, seeking recovery of fuel and regulatory costs it incurred to provide reliability services during a storm on February 10, 2013. Specifically, Dominion followed ISO-NE's dispatch instructions to operate its dual-fuel generating units in real-time beyond their day-ahead schedules and to use natural gas, rather than coming off-line to switch to less expensive fuel oil. Dominion noted its inability to recover costs for February 8 and 9, when it also provided reliability services, because mitigation of supply offers is a necessary precondition to seeking additional cost recovery under the Tariff and for those two days Dominion's offers had not been mitigated.⁵

3. In *Dominion*, the Commission granted Dominion's request for cost recovery for February 10, and, pursuant to its authority under section 206 of the FPA, found that ISO-NE's Tariff is unjust, unreasonable, unduly discriminatory or preferential, because it does not provide resources an adequate opportunity to recover costs incurred to comply with ISO-NE directives to ensure reliability in instances when their supply offers were not mitigated. The Commission expressed concern that "[i]n situations such as the one Dominion experienced on February 8 and 9, despite complying with ISO-NE's directives to maintain reliability, resources could suffer significant financial loss in unrecovered

No. EL13-72-000 (issued June 14, 2013) (June 14 Notice); *see also* 78 Fed. Reg. 51,718 (2013).

⁵ Section III.A.15 of Appendix A to the Tariff allows a market participant to seek additional cost recovery under section 205 of the FPA if the market participant submits a supply offer at the energy offer cap or if, as a result of mitigation applied under Appendix A, the market participant will not recover the fuel and variable operating and maintenance costs of a resource for all or part of one or more operating days. Although Dominion's generating units provided a critical reliability service at ISO-NE's request for the duration of the storm on February 8 through 10, 2013, Dominion's units were only mitigated on February 10, not on February 8 and 9.

costs.”⁶ The Commission found that such an outcome for resources called upon to respond to “critical reliability needs” is unjust and unreasonable.⁷

4. The Commission directed ISO-NE to submit Tariff revisions to allow resources to submit a section 205 filing for cost recovery, including cost recovery of fuel and variable operation and maintenance costs, “in circumstances where for reliability reasons a resource is dispatched (1) beyond its day-ahead schedule, where there is no opportunity to refresh the offer price to reflect the current costs; or (2) after the results of the day-ahead market schedule are published, where the resource did not receive a day-ahead market schedule.”⁸

5. Emphasizing that the Tariff revisions directed in *Dominion* should be “sufficiently restrictive to discourage anticompetitive bidding behavior but still allow for cost recovery in certain circumstances,”⁹ the Commission gave examples of when resources should be able to seek cost recovery for providing essential support, such as where a resource submits an offer based on one fuel type but is required to run on another or cannot burn natural gas based on an Operational Flow Order restriction. The Commission further stated that

[the] examples are not intended to be exhaustive and should not unduly limit the criteria ISO-NE develops for cost recovery under extraordinary circumstances. Our intention is for ISO-NE’s tariff to provide enough flexibility to allow for cost recovery by resources that respond under extraordinary circumstances like those faced by the ISO-NE market on February 8 and 9.¹⁰

6. On August 13, 2013, ISO-NE submitted the subject Compliance Revisions in response to *Dominion*.

⁶ *Dominion*, 143 FERC ¶ 61,233 at P 25.

⁷ *Id.*

⁸ *Id.* P 26.

⁹ *Id.* P 28.

¹⁰ *Id.*

II. Compliance Revisions

7. Under the Compliance Revisions, proposed Tariff section III.A.15.1, a market participant may make a section 205 filing for cost recovery where, “at the direction of the ISO a Market Participant has adjusted the output of a Resource to an amount that exceeds the amount scheduled for the Resource in the Day-Ahead Energy Market to address a critical reliability issue that has resulted in the ISO declaring an abnormal conditions alert for one of the reasons specified in Section III.A.15.1.1.” Section III.A.15.1.1 provides a list of the bases for declaration of an abnormal conditions alert, including:

(a) Forecasted or actual deficiency of operating reserves requiring implementation of ISO New England Operating Procedure No. 4, Action During a Capacity Deficiency [(OP-4)], or ISO New England Operating Procedure No. 7, Action in an Emergency [(OP-7)]; (b) The electric system in New England experiences low transmission voltages and/or low reactive reserves; (c) A solar magnetic disturbance occurs; (d) A cold weather event is declared; (e) Inability to provide first contingency protection when an undesirable post-contingency condition might result, such as load shedding; (f) A credible threat to power system reliability is made, such as sabotage or an approaching storm; (g) Operational staffing shortage impacting normal power system operations within New England occurs; (h) Any other condition that may cause a critical reliability issue as determined by the ISO’s operations shift supervisor or the Local Control Center system operator.

For purposes of this Section III.A.15, declaring an action of ISO New England Operating Procedure No. 4 or ISO New England Operating Procedure No. 7 shall be treated as declaring an abnormal conditions alert.

8. As further discussed below, conditions (a) through (h) largely mirror conditions that would trigger a Master/Local Control Center Procedure No. 2 (M/LCC 2) Abnormal Conditions Alert.¹¹

¹¹ M/LCC 2 is an existing ISO-NE operating procedure “used to alert applicable power system operations, maintenance, construction and test personnel as well as each applicable Market Participant . . . when [one of the above-mentioned conditions] affecting the reliability of the power system exists or is anticipated.” ISO-NE,

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9. The Compliance Revisions specify that a resource may seek cost recovery for the period of time when the resource was required to operate to address the critical reliability issue, but only for the amount by which the actual incremental costs of operating the resource in excess of the amount scheduled in the day-ahead energy market exceeds the incremental costs reflected in the resource's supply offer.¹² The Compliance Revisions also require a market participant to explain why the actual incremental costs of operating the resource exceeded the incremental costs reflected in the supply offer.¹³

10. ISO-NE states that the Compliance Revisions are appropriately narrow in order to: (1) maintain proper incentives for sellers to incorporate expected costs into their offers and prevent the distortion of market price signals; (2) minimize the mixing of cost- and market-based pricing approaches, and reduce opportunities for generators to earn the "higher of" the two approaches; and (3) ensure that supply offers remain financially binding, with only a very limited mechanism for a market participant to seek, *ex post*, greater payment for its services than the amount the market participant specifically agreed to accept when it submitted its supply offer.

11. ISO-NE seeks an effective date of June 25, 2013, the refund effective date established in *Dominion*. ISO-NE also states that it expects to remove the Compliance Revisions in a future filing after December 3, 2014, the established effective date of Tariff provisions providing for increased flexibility to update supply offers during the operating day,¹⁴ which, according to ISO-NE, will obviate the need for the type of cost recovery provision contemplated in this proceeding.

III. Notice of Filings and Responsive Pleadings

12. Notice of the filing was published in the *Federal Register*, 78 Fed. Reg. 51,718 (2013), with interventions and protests due on or before September 3, 2013.

Master/Local Control Center Procedure No. 2 - Abnormal Conditions Alert (Aug. 2013), available at http://www.iso-ne.com/rules_proceeds/operating/mast_satllte/mlcc2.pdf.

¹² See proposed Tariff section III.A.15.1 (25.0.0).

¹³ See proposed Tariff section III.A.15.2 (25.0.0).

¹⁴ *ISO New England Inc.*, 145 FERC ¶ 61,014 (2013) (accepting, subject to a compliance filing, the referenced Tariff provisions).

13. Algonquin Gas Transmission, LLC; Capital Power Corporation; Consolidated Edison Energy, Inc.; Exelon Corporation; GDF Suez Energy North America, Inc.; Northeast Utilities Services Company; the NRG Companies (NRG);¹⁵ and the PSEG Companies (PSEG)¹⁶ filed timely motions to intervene, and NRG separately filed timely comments. The United Illuminating Company (United Illuminating); New England Power Generators Association (NEPGA); and Dominion Resources Services, Inc. (Dominion) filed timely motions to intervene and comments. PSEG filed comments out-of-time. New England Power Pool (NEPOOL) Participants Committee filed timely comments and separately filed a motion to intervene out-of-time. The Retail Energy Supply Association (RESA) filed a motion to intervene and comments out-of-time.

14. On September 4, 2013, ISO-NE filed an answer (September 4 Answer) to NEPOOL's comments. On September 18, 2013, ISO-NE filed an answer (September 18 Answer) to Dominion's, NRG's, and PSEG's protests. On September 18, 2013, NEPOOL filed an answer to ISO-NE's September 4 Answer. On September 24, 2013, NRG filed an answer to ISO-NE's September 18 Answer. On October 3, 2013, ISO-NE filed an answer to NEPOOL's and NRG's answers.

A. Comments and Protests

15. PSEG, NRG, and Dominion argue that the Compliance Revisions are too narrow. NRG states that the Commission's references to "extraordinary circumstances" cannot reasonably be interpreted to limit generators' ability to seek cost recovery only under abnormal conditions.¹⁷ PSEG, NRG, and Dominion assert that an abnormal conditions alert as proposed here would not account for every critical reliability event. NRG states that ISO-NE would be able to dispatch resources beyond their day-ahead schedules regardless of whether or not an abnormal conditions alert would be declared and that, from the generator's perspective, every dispatch instruction is equivalent and made in

¹⁵ The NRG Companies are NRG Power Marketing LLC; GenOn Energy Management, LLC; Connecticut Jet Power LLC; Devon Power LLC; Middletown Power LLC; Montville Power LLC; Norwalk Power LLC; NRG Canal LLC; NRG Kendall LLC.

¹⁶ The PSEG Companies are PSEG Power LLC; PSEG Nuclear LLC; PSEG Fossil LLC; and PSEG ER&T.

¹⁷ NRG Protest at 5.

support of system reliability.¹⁸ Both NRG and Dominion state that, in February 2013 and June 2013 combined, ISO-NE dispatched approximately 250 gas- and oil-fired units beyond their day-ahead schedules to ensure critical reliability in instances when ISO-NE did not also declare an abnormal conditions alert.¹⁹ NRG and Dominion state that, under the Compliance Revisions, these resources would remain ineligible for cost recovery.

16. NRG argues that the Compliance Revisions do not remedy the problem that the Commission identified in *Dominion*, which, according to NRG, is resources' inability to recover their legitimate fuel costs when dispatched for reliability reasons. Dominion argues that the Compliance Revisions do not fully address the specific examples the Commission provided in *Dominion*, such as when a resource submits an offer based on one fuel type but is required to run on another or cannot burn natural gas based on an Operational Flow Order restriction.²⁰ Dominion asserts that these situations could happen even when ISO-NE has not declared an abnormal conditions alert.

17. PSEG, NRG, and Dominion further argue that ISO-NE's rationale to narrowly draw the Compliance Revisions in order to discourage anticompetitive behavior, such as altering a supplier's incentives to incorporate fully the costs it may incur, is unfounded. NRG argues that this type of anticompetitive behavior is not a profitable strategy because the resulting cost recovery would be limited to actual costs incurred.²¹ NRG asserts that a generator seeking cost recovery faces the substantial procedural burden of preparing documentation justifying its actual costs and initial offers and also runs the risk of the Internal Market Monitor (IMM) and Commission rejecting the request. Dominion also asserts that a resource could not accurately predict ISO-NE declaring a critical reliability event or issuing an abnormal conditions alert for purposes of making offers day-ahead.²²

18. Dominion requests that the Commission reject ISO-NE's proposal and instead direct ISO-NE to either (a) delete the condition regarding issuance of an abnormal conditions alert, or (b) direct ISO-NE to amend the Tariff to allow resources an

¹⁸ NRG Protest at 8-9.

¹⁹ Dominion Protest at 9; NRG Protest at 8.

²⁰ *Dominion*, 143 FERC ¶ 61,233 at P 28.

²¹ NRG Protest at 10.

²² Dominion Protest at 12.

opportunity to submit a section 205 filing to recover costs under broader circumstances, not just where ISO-NE has issued an abnormal conditions alert, as proposed here.²³

19. NEPOOL similarly argues that the Compliance Revisions are too narrow, stating that they should allow cost recovery in the event of natural gas pipeline *force majeure* events.²⁴ NEPOOL argues that pipeline *force majeure* events are the kind of “extraordinary circumstances” the Commission sought to address in *Dominion*. NEPOOL avers that, although *Dominion* involved a generator dispatched above and beyond its day-ahead schedule, the logic in that order applies equally to situations where a generator with a day-ahead schedule faces unrecoverable costs resulting from such an extraordinary and unpredictable event as a *force majeure* event. NEPOOL argues that units meeting their day-ahead commitments are providing the same reliability benefits as units that are dispatched beyond their day-ahead schedules, and since both sets of units are potentially exposed to the same extraordinary costs, they should be treated similarly for the purposes of cost recovery.

20. To that end, NEPOOL submits its own proposed Tariff language²⁵ providing for cost recovery in cases of a pipeline *force majeure* event, arguing that its proposed revisions constitute an alternative proposal covered by the “jump ball provision”²⁶ of the

²³ Dominion Protest at 13. NRG also states that the Commission should reject ISO-NE’s proposal and instead direct ISO-NE to adopt NRG’s proposed Tariff language that removes the condition that ISO-NE must issue an abnormal conditions alert. See NRG Protest at 11 and Exhibit 1.

²⁴ NEPOOL Comments at 13.

²⁵ NEPGA supports NEPOOL’s proposal.

²⁶ The jump ball provision refers to section 11.1.5 of the Participant Agreement, which states:

If the Participants Committee vote relating to an ISO Market Rule proposal results in the approval by the Participants Committee by a Participants Vote equal to or greater than 60% of a Market Rule proposal that is different from the one proposed by ISO, including, but not limited to, a Governance Participant proposal, ISO shall, as part of any required Section 205 filing, describe the alternate Market Rule proposal in detail sufficient to permit reasonable review by the Commission, explain ISO’s reasons for not

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Participants Agreement and therefore should be considered by the Commission on equal footing with the ISO-NE proposal. NEPOOL states that its alternative would allow generators to seek recovery of costs incurred for the duration of the *force majeure* declaration until the market participant is able to submit a new supply offer for the resource to reflect its incremental costs. NEPOOL notes that the stakeholders at the Participants Committee meeting failed to approve the Compliance Revisions, with only 49.5 percent voting in favor, while NEPOOL's alternative was approved by stakeholders, with 64.7 percent voting in favor.

21. NEPOOL argues that, even if its proposed Tariff language does not constitute a jump ball proposal, the Participants Agreement provides that the Commission “may adopt any or all of ISO’s Market Rule proposal or the alternative Market Rule proposal as it finds, in its discretion, to be just and reasonable and preferable[,]” and that this provision is independent and separate from the requirement that ISO-NE include in a section 205 filing a NEPOOL-approved alternative market rule proposal. NEPOOL states that, therefore, under section 11.1.5 of the Participants Agreement, the Commission may adopt a NEPOOL-approved alternative market rule proposal regardless of how the alternative is presented to the Commission.

22. PSEG and Dominion further assail the Compliance Revisions as not permitting resources to refresh their supply offers to accurately include the cost of fuel when they are dispatched in the real-time market or beyond their day-ahead schedules.²⁷ PSEG agrees with ISO-NE that the Tariff provisions to improve offer flexibility will address this problem when they become effective on December 3, 2014,²⁸ but in the interim, resources should still have the opportunity to recover fuel costs when operating at the request of ISO-NE. PSEG requests that the Commission reject the Compliance Revisions

adopting the proposal, and provide an explanation as to why ISO believes its own proposal is superior to the proposal approved by the Participants Committee. The Commission will not be required to consider whether the then-existing filed rate is unlawful, and may adopt any or all of ISO’s Market Rule proposal or the alternate Market Rule proposal as it finds, in its discretion, to be just and reasonable and preferable.

²⁷ PSEG Protest at 4; Dominion Protest at 8.

²⁸ See *ISO New England Inc. and New England Power Pool*, 145 FERC ¶ 61,014 (2013).

and NEPOOL's proposal and instead direct ISO-NE to resubmit a compliance filing that includes provisions that allow resources that operate either beyond their day-ahead schedules, or in the real-time market without a day-ahead schedule, the opportunity to submit a section 205 filing with the Commission for cost recovery where there is no opportunity to refresh the offer price to reflect current costs.²⁹

23. RESA and United Illuminating support the Compliance Revisions. RESA states that it is important to narrowly construe the circumstances in which supply offers are not binding; otherwise resources may underbid in the day-ahead market and file for cost recovery for their actual costs. RESA asserts that cost recovery should be limited to abnormal conditions on the electrical system and not based directly on pipeline conditions or when generators could obtain fuel at a high price.³⁰ RESA also explains that allocating additional costs to Net Commitment Period Compensation, or uplift, imposes on load-serving entities costs and risks that are difficult to hedge.

24. United Illuminating adds that the NEPOOL proposal is overly broad and would shift risk of pipeline *force majeure* events from generators to ratepayers. United Illuminating asserts that generators should factor in reliability and deliverability of natural gas into their offers, and that the NEPOOL proposal does not provide proper incentives for generators to select more reliable delivery options, and runs counter to Commission rulings on risk sharing and cost recovery for pipeline *force majeure* events.³¹

B. Answers

25. ISO-NE argues that NEPOOL's proposal is fundamentally inconsistent with the competitive wholesale electricity market structure in New England and would violate the Commission's directives in *Dominion* by permitting a cost recovery filing anytime there is a *force majeure* event affecting a natural gas pipeline, regardless of whether that event

²⁹ PSEG Protest at 8-9.

³⁰ RESA Comments at 6.

³¹ United Illuminating Comments at 9 (citing *Gulf South Pipeline Co., LP*, 141 FERC ¶ 61,224, at P 2 (2012) and *Tennessee Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022 (1996), *order on reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070 (1997), *as clarified by Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 63 (2006)).

actually impacts the reliability of the electrical system.³² ISO-NE also asserts that the jump ball provisions in the Participants Agreement do not apply here, because they pertain only to ISO-NE market rule proposals made pursuant to FPA section 205, while this filing is made pursuant to FPA section 206.

26. ISO-NE disagrees with protesters' assertion that the Commission should require an additional opportunity for cost recovery when a resource is dispatched above its day-ahead schedule during normal conditions.³³ ISO-NE argues that such a requirement conflicts with the Commission's directive to limit the additional cost recovery to extraordinary circumstances involving the provision of critical reliability services. ISO-NE also argues that, given the frequency with which resources are dispatched beyond their day-ahead schedule, it would be fundamentally inconsistent with a market structure to permit such frequent cost recovery. Finally, ISO-NE argues that broader cost recovery is unnecessary because generators can include risk premiums in their supply offers or choose to make advance fuel arrangements that provide cost certainty and reflect the costs of those arrangements in their supply offers.

27. NEPOOL argues that, contrary to ISO-NE's characterizations, NEPOOL's proposal does not change the financially binding nature of accepted supply offers and only provides the *opportunity* for cost recovery. NEPOOL asserts that market participants cannot reasonably anticipate pipeline *force majeure* events in a way that would enable them to game the market.

28. NRG states that every dispatch directive is made in support of reliability, and cost recovery should not depend on the issuance of an abnormal conditions alert. NRG asserts that ISO-NE's proposal is unjust and unreasonable because generators called upon to preserve system reliability can be forced to run at a "cash loss."³⁴ NRG also argues that ISO-NE mischaracterizes the impact of market mitigation as many generators subject to intra-day dispatch beyond their day-ahead schedules are often either in constrained areas or committed for local reliability. NRG asserts that, under both circumstances, mitigation rules limit supply offers to a smaller bandwidth above the reference level, which can cause the generator to incur additional costs for which ISO-NE's proposal provides no means of recovery.

³² ISO-NE September 4, 2013 Answer at 7.

³³ ISO-NE September 18, 2013 Answer at 6.

³⁴ NRG Answer at 3.

IV. Discussion

A. Procedural Matters

29. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

30. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant NEPOOL's, RESA's, and PSEG's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

31. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept ISO-NE's, NRG's, and NEPOOL's answers because they have provided information that assisted us in our decision-making process.

B. Commission Determination

32. We find that the Compliance Revisions satisfy the Commission's directives in *Dominion*, and, accordingly, we will accept them effective June 25, 2013.

33. In *Dominion*, the Commission found that, in situations like the one Dominion experienced on February 8 and 9, 2013, it is unjust and unreasonable for resources to suffer significant unrecovered costs despite complying with ISO-NE's directives to respond to "critical reliability" needs.³⁵ Thus, the Commission directed ISO-NE to submit Tariff revisions

which allow resources to submit a section 205 filing for cost recovery, including fuel and variable operation and maintenance costs for the resource, in circumstances where for reliability reasons a resource is dispatched: (1) beyond its day-ahead schedule, where there is no opportunity to refresh the offer price to reflect current costs; or (2) after the

³⁵ *Dominion*, 143 FERC ¶ 61,233 at P 25.

results of the day-ahead market schedule are published, where the resource did not receive a day-ahead market schedule.³⁶

The Commission explained that its intention in directing these Tariff revisions “[was] for ISO-NE’s tariff to provide enough flexibility to allow for cost recovery by resources that respond under extraordinary circumstances like those faced by the ISO-NE market on February 8 and 9[, 2013].”³⁷

34. As discussed above, ISO-NE’s Compliance Revisions allow market participants a non-market opportunity to request cost recovery when ISO-NE both declares an “abnormal conditions alert,” i.e., a reliability issue triggered by one of the conditions listed in Section III.A.15.1.1, and also directs a market participant to either: (1) run a resource at a level that exceeds the resource’s day-ahead energy market schedule; or (2) run a resource, even though the resource did not have a day-ahead energy market schedule.

35. We agree with ISO-NE that the conditions listed in proposed Section III.A.15.1.1 accurately represent the types of “extraordinary circumstances” the Commission identified in *Dominion* and intended for ISO-NE to address in its Tariff revisions. Thus, we find that ISO-NE’s Compliance Revisions satisfy the Commission’s compliance directive. We note that ISO-NE has several years of experience using triggers to issue an M/LCC 2 Abnormal Conditions Alert, which are similar to those proposed here, and we expect that using the triggers proposed here will help ensure that necessary cost recovery will be available when appropriate, and only when appropriate. Indeed, an M/LCC 2 Abnormal Conditions Alert was in effect during the winter storm event that gave rise to this proceeding.³⁸

36. Protestors assert that the Compliance Revisions reflect an erroneously narrow interpretation of *Dominion* and should expressly allow for cost recovery in a broader range of circumstances, including, in NEPOOL’s view, a pipeline *force majeure* event. We disagree. In *Dominion*, the Commission found that the Tariff produced an unjust and unreasonable outcome “for resources called upon to respond to *critical* reliability

³⁶ *Id.* P 26.

³⁷ *Id.* P 28.

³⁸ An M/LCC 2 Abnormal Conditions Alert was in effect from February 8-12, 2013.

needs[.]”³⁹ and qualified its directive to “allow for cost recovery by resources that respond under *extraordinary circumstances like those faced by the ISO-NE market on February 8 and 9*[, 2013].”⁴⁰ The italicized language reflects the Commission’s intent that the cost recovery provisions directed in *Dominion* be triggered in situations involving critical reliability needs and extraordinary circumstances, which would not necessarily include every event raised by protestors.⁴¹ We find that ISO-NE’s Compliance Revisions properly reflect the Commission’s intent.

37. For similar reasons, we further disagree with protestors’ assertions that the Compliance Revisions should account for every situation giving rise to the examples given in *Dominion*. The Commission indeed expressed concern that a resource should be able to seek cost recovery, where, for example, it submits an offer based on one fuel type but is required to run on another or cannot burn natural gas based on an Operational Flow Order restriction. However, in giving the examples, the Commission also noted the importance of bounding the Tariff revisions to discourage anti-competitive bidding behavior while allowing cost recovery for providing critical reliability service.⁴² Out-of-market cost recovery should be appropriately tailored to allow resources to recover costs when called upon to address critical reliability concerns in extraordinary circumstances, while limiting market distortions and ensuring that supply offers remain financially binding. Indeed, the Commission has previously cautioned against allowing generation resources to “toggle between” market-based and cost-based rates, at the expense of properly functioning markets.⁴³ To that end, the Commission gave ISO-NE discretion in proposing what would constitute the extraordinary circumstances under which resources

³⁹ *Dominion*, 143 FERC ¶ 61,233 at P 25 (emphasis added).

⁴⁰ *Id.* P 28 (emphasis added).

⁴¹ For example, not every pipeline *force majeure* event would involve critical reliability needs and extraordinary circumstances on the electric system.

⁴² *Dominion*, 143 FERC ¶ 61,233 at P 28.

⁴³ See *Bridgeport Energy, LLC*, 118 FERC ¶ 61,243, at P 66 (2007); see also *ISO New England Inc.*, 123 FERC ¶ 61,290, at P 8 (2008) (“[W]e would expect that any proposed revisions to the current compensation mechanism for reliability units will limit or eliminate concerns over generators earning the ‘higher of’ a market or cost-based rate.”).

are eligible for cost recovery. We find that, as explained by ISO-NE, the Compliance Revisions reasonably balance competing considerations in deciding when to allow for cost recovery, while limiting market distortions and ensuring that supply offers remain financially binding.

38. However, if a critical reliability event other than those particularly specified in section III.A.15.1.1 occurs, condition (h) under section III.A.15.1.1 of the Compliance Revisions allows for cost recovery for “any other condition that may cause a critical reliability issue as determined by the ISO’s operations shift supervisor or the Local Control Center system operator.”⁴⁴ To the extent protestors assert that resources would not be allowed cost recovery at all for certain situations, condition (h) might encompass those situations, where they involve extraordinary circumstances, so we find their concerns to be speculative or premature.

39. We reject NEPOOL’s argument that the proposal set forth in its protest should be considered on equal footing with the Compliance Revisions. The jump ball provision is wholly inapplicable to this case involving a compliance filing submitted by ISO-NE, pursuant to the Commission’s specific directive that ISO-NE submit such a filing as a result of a proceeding the Commission instituted under section 206 of the FPA. We further reject NEPOOL’s argument that, under the jump ball provision, the Commission “may adopt any or all of ISO’s Market Rule proposal or the alternative Market Rule proposal as it finds, in its discretion, to be just and reasonable and preferable,” regardless of whether ISO-NE is making a section 205 filing. NEPOOL’s argument ignores the entire context of the jump ball provision, which applies to section 205 filings and not to Commission-ordered compliance filings that are the result of the Commission’s exercise of its authority under section 206.

40. Lastly, regarding the argument that market participants are unable to refresh offer prices to accurately price in the cost of fuel when dispatched by ISO-NE, we note that this issue is beyond the scope of the directives in *Dominion* and, therefore, beyond the scope of this compliance proceeding.

⁴⁴ See proposed Tariff section III.A.15.1.1(h) (25.0.0).

The Commission orders:

ISO-NE's Compliance Revisions are hereby accepted, effective June 25, 2013, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.