

145 FERC ¶ 61,109  
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.

Dominion Energy Marketing, Inc.  
ISO New England Inc.

Docket No. ER13-1291-001  
EL13-72-001

ORDER DENYING REHEARING

(Issued November 7, 2013)

1. By order issued June 14, 2013, the Commission granted Dominion Energy Marketing, Inc.'s (Dominion) request for recovery of fuel and reasonable regulatory costs it incurred by following ISO New England Inc.'s (ISO-NE) dispatch instructions during a storm in February 2013.<sup>1</sup> In the same order, the Commission instituted a proceeding under section 206 of the Federal Power Act (FPA)<sup>2</sup> requiring ISO-NE to submit revisions to its Transmission, Markets, and Services Tariff (Tariff) to allow resources to recover costs when dispatched for reliability reasons in certain circumstances. Dominion seeks rehearing of the Commission's section 206 directive in the June 14, 2013 Order. As discussed below, we will deny rehearing.<sup>3</sup>

**I. Background**

2. On April 15, 2013, as allowed under Section III.A.15 of ISO-NE's Tariff, Dominion submitted a filing under section 205 of the FPA<sup>4</sup> seeking recovery of fuel and

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<sup>1</sup> *Dominion Energy Marketing, Inc.*, 143 FERC ¶ 61,233 (2013) (June 14, 2013 Order).

<sup>2</sup> 16 U.S.C. § 824e (2012).

<sup>3</sup> While Dominion styles its pleading as a request for clarification or, alternatively, rehearing, it is in essence a request for rehearing. By denying rehearing for the reasons set forth below, the Commission also denies Dominion's request for clarification.

<sup>4</sup> 16 U.S.C. § 824d (2012).

reasonable regulatory costs it incurred to provide reliability services during a storm on February 10, 2013. Specifically, it followed ISO-NE's dispatch instruction 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.<sup>5</sup> Dominion noted its inability under ISO-NE's Tariff to recover costs for February 8 and 9 when it also provided similar 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.

3. In the June 14, 2013 Order, 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 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 costs."<sup>6</sup> The Commission found that such an outcome for resources called upon to respond to "critical reliability needs" is unjust and unreasonable.<sup>7</sup>

4. The Commission directed ISO-NE to submit tariff revisions to allow resources to submit a section 205 filing to seek 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."<sup>8</sup>

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<sup>5</sup> Section III.A.15 of Appendix A to the Tariff allows a market participant to seek additional cost recovery under section 205 of the Federal Power Act, if, as a result of mitigation applied under Appendix A, it will not recover the fuel and variable operating and maintenance costs of a resource for all or part of one or more operating days. Dominion's units were not mitigated on February 8 and 9, 2013, but were mitigated on February 10, 2013, although the units provided a critical reliability service at ISO-NE's request for the duration of the storm on February 8-10, 2013.

<sup>6</sup> June 14, 2013 Order, 143 FERC ¶ 61,233 at P 25.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* P 26.

5. Emphasizing that the Tariff revisions directed in the June 14, 2013 Order should be “sufficiently restrictive to discourage anticompetitive bidding behavior but still allow for cost recovery in certain circumstances,”<sup>9</sup> the Commission gave examples of when resources should be able to seek cost recovery, 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 because of an Operation 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 [2013].”<sup>10</sup>

6. On August 13, 2013, ISO-NE submitted its compliance filing in Docket Nos. ER13-2149-000 and EL13-72-002 in response to the June 14, 2013 Order. Dominion has submitted a protest in that proceeding, which largely reflects the same arguments it asserts here.

## II. Request for Rehearing

7. On rehearing, Dominion argues that resources should be allowed to recover costs when dispatched for reliability reasons as provided for in the June 14, 2013 Order, “regardless of how ISO-NE characterizes the reliability reason.”<sup>11</sup> Dominion states that ISO-NE has sought to limit the cost recovery provisions directed in the June 14, 2013 Order to only situations where ISO-NE has declared a Master/Local Control Center Procedure No. 2 (M/LCC 2) Alert.<sup>12</sup> Dominion asserts that operation for reliability is not restricted to times when an M/LCC 2 Alert has been issued.

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<sup>9</sup> June 14, 2013 Order, 143 FERC ¶ 61,233 at P 28.

<sup>10</sup> *Id.*

<sup>11</sup> Rehearing Request at 4 (citing the June 14, 2013 Order).

<sup>12</sup> M/LCC 2 defines a range of abnormal conditions that will trigger an alert, including: (1) forecasted or actual deficiency of operating reserves requiring implementation of OP-4 (Action During a Capacity Deficiency) or OP-7 (Action in an Emergency); (2) low transmission voltages and/or low reactive reserves; (3) inability to provide first contingency protection when an undesirable post-contingency condition might result (e.g., load shedding); (4) a Cold Weather Event is declared; and (5) a credible threat to power system reliability, such as sabotage or an approaching storm. We  
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8. Dominion further argues that allowing cost recovery only where ISO-NE issued such an alert is based on an erroneously narrow interpretation of the June 14, 2013 Order and is inconsistent with the two examples given in that order involving fuel switching and Operational Flow Order restrictions. According to Dominion, an M/LCC 2 Alert would not encompass those examples. Dominion further argues that such a limitation would ignore what Dominion describes as the Commission's focus in the June 14, 2013 Order — the inability of a resource to recover its costs when responding to a reliability directive because of limited offer flexibility in ISO-NE's Tariff, not the specific nature of the reliability event. Dominion asserts that granting rehearing is necessary to adequately remedy that specific concern.<sup>13</sup>

9. On July 18, 2013 and July 30, 2013, ISO-NE and the New England Power Pool (NEPOOL) Participants Committee submitted answers to Dominion's rehearing request.

### **III. Procedural Matters**

10. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2013), prohibits answers to a request for rehearing. Thus, we will reject ISO-NE's and NEPOOL's answers.

### **IV. Discussion**

11. We will deny Dominion's request for rehearing. As discussed below, the remedy in the June 14, 2013 Order was appropriately tailored to allow resources to recover costs when called upon to address critical reliability concerns in extraordinary circumstances, so we will not require the broader revision Dominion seeks.

12. As noted above, in the June 14, 2013 Order the Commission directed ISO-NE to submit Tariff revisions to allow resources to submit a section 205 filing to seek 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. This directive intentionally and appropriately reflects a balancing of competing considerations:

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note that the ISO-NE compliance filing in Docket No. ER13-2149-000 states that an M/LCC 2 alert was issued from February 8-12, 2013, which included the time period that Dominion's units were dispatched for reliability purposes.

<sup>13</sup> Rehearing Request at 10 (citing *Associated Gas Distributors v. FERC*, 824 F.2d 981, 1019-20 (D.C. Cir. 1987)).

ensuring that resources called upon for reliability reasons in extraordinary circumstances may recover costs associated with following ISO-NE's dispatch instructions, while being mindful of opportunities for gaming and the importance of ensuring that supply offers remain financially binding.

13. Indeed, the Commission expressly acknowledged concerns associated with broadening the circumstances allowing for out-of-market recovery of actual fuel costs, such as undermining the accuracy of submitted offers or incentivizing market participants to submit low offers in anticipation of a reliability event in order to increase their chance of being selected. Thereafter, resources could potentially seek cost recovery if the market clearing price failed to cover their costs. Considering these risks, the Commission bounded its directive, stating that those resources providing "critical" reliability services should have a "reasonable" opportunity to recover the costs associated with providing that service.<sup>14</sup> The Commission further explained its intention that ISO-NE's Tariff provide enough flexibility to allow for cost recovery by resources that respond under "extraordinary circumstances" such as those faced by the ISO-NE market on February 8 and 9.<sup>15</sup>

14. The Commission reaffirms that 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.<sup>16</sup> Consistent with these concerns, the Commission limited its section 206 directive in the June 14, 2013 Order to address only the particular problem at issue in this proceeding:<sup>17</sup> the potential for resources to suffer significant financial losses when responding to critical reliability needs in extraordinary circumstances.

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<sup>14</sup> June 14, 2013 Order, 143 FERC ¶ 61,233 at P 27.

<sup>15</sup> *Id.* P 28.

<sup>16</sup> 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.").

<sup>17</sup> While Dominion relies on *Associated Gas* to support its argument that denying rehearing would result in an inadequate remedy to the problem identified in the June 14, 2013 Order, *Associated Gas* stands for the proposition that an adopted remedy should be  
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15. Dominion essentially requests that the Commission broaden the parameters of the June 14, 2013 Order to allow a generator expanded opportunities to seek cost recovery. However, doing so would have several undesirable consequences, as it would deprive ISO-NE of the ability to define a critical reliability event on its system in compliance with the Commission's June 14, 2013 Order, effectively allowing resources to seek cost recovery for any reason, no matter how loosely related to reliability concerns. Such an outcome would encourage anti-competitive bidding behavior. ISO-NE is charged with protecting short-term reliability in New England and operating the system according to reliability standards; accordingly, we are not persuaded that ISO-NE should be divested of its authority to identify a reliability event. To that end, although the June 14, 2013 Order provided guidance to ISO-NE in revising its Tariff, the Commission also intended to allow ISO-NE some discretion in developing appropriate criteria for an interim cost recovery measure.

16. Moreover, we reject Dominion's argument that limiting ISO-NE's ability to characterize a critical reliability event is necessary to remedy the concerns identified in the June 14, 2013 Order. While the Commission was concerned with practical limitations in the Tariff allowing for cost recovery, as Dominion notes, the Commission also expressly described the nature of the *situations* that should allow for cost recovery as times of "critical reliability" and "extraordinary circumstances." And, for the reasons stated above, we are not persuaded that ISO-NE should have no input in defining those events.

17. As to Dominion's argument that an M/LCC 2 Alert would not encompass the two examples set forth in the June 14, 2013 Order for when cost recovery should be allowed,<sup>18</sup> we note that ISO-NE has submitted its compliance filing to that order in Docket No. ER13-2149-000.<sup>19</sup> Dominion has raised the same argument in that case, and the issue will be addressed in that proceeding.

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appropriately tailored (i.e., neither too broad nor too narrow) to the particular concern at issue and thus supports the Commission's determination here. *See Associated Gas Distributors v. FERC*, 824 F.2d at 1019 ("Neither *Wisconsin Gas* nor any other case of which we are aware supports an industry-wide solution for a problem that exists only in isolated pockets. In such a case, the disproportion of remedy to ailment would, at least at some point, become arbitrary and capricious.").

<sup>18</sup> Those circumstances are where a resource: (1) submits an offer based on one fuel type but is required to run on another; or (2) cannot burn natural gas because of an Operational Flow Order restriction.

<sup>19</sup> *See ISO New England Inc.* 145 FERC ¶ 61,110 (2013).

The Commission orders:

Dominion's request for rehearing of the June 14, 2013 Order is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.