

February 28, 2025
By Electronic Delivery

Honorable Debbie-Anne A. Reese
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: New York Independent System Operator, Inc. Proposed Tariff Revisions Under Section 206 of the Federal Power Act Regarding the Recovery and Allocation of Costs that Might Be Imposed Under the President’s February 1 Executive Order “Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border,” Alternative Request for Action Under Exigent Circumstances Section 205 Filing Authority, Request for Shortened Notice and Comment Period, Request for Immediate Refund Effective Date and Effective Date, and Request for Expedited Commission Action, Docket Nos. EL25-____-000 and ER25-____-000

Dear Secretary Reese:

In accordance with Section 206 of the Federal Power Act (“FPA”),¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this filing. The purpose of the tariff revisions proposed herein is to clearly establish that **if** relevant federal authorities determine that the NYISO is required to pay duties on imports of electrical energy from Canada **then**: (i) the NYISO will have clear rules in place in its Open Access Transmission Tariff (“OATT”) to govern the NYISO’s recovery and allocation of its costs; and (ii) that the creditworthiness rules set forth in the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”) expressly allow the NYISO to make necessary adjustments to customer credit requirements to address duty-related costs.

The President of the United States announced in a February 1, 2025, Executive Order “Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border” (“Canadian Tariff Order”) that an ad valorem rate of duty² would be imposed on “[a]ll articles that are products of Canada.”³ The Canadian Tariff Order is presently scheduled to take effect on March 4, 2025,

¹ 16 U.S.C. § 824e (2025).

² For convenience, this transmittal letter uses the term “duty” to refer to the ad valorem rate of duty that might be imposed under the Canadian Tariff Order or subsequent directives.

³ Exec. Order No. 14193, 90 Fed. Reg. 9113 (Feb. 1, 2025) (hereinafter Canadian Tariff Order).

The President stated on February 27 that he intends for duties to be implemented on March 4.⁴ At the same time, the President has expressly reserved the right to do so sooner,⁵ and it is also possible that duties could be delayed further only to be implemented, with or without advance notice, at an unknown future time. It is not yet clear whether imports of electrical energy from Canada are subject to the Canadian Tariff Order or, if they are, whether the NYISO will be required to play any role in collecting or remitting duties. The NYISO believes that there are strong legal and policy arguments that the answer to both of these questions is “no.”

The NYISO is **not** asking the Commission to address the merits of either question at this time. Rather, the NYISO is asking the Commission to accept tariff provisions that will address the possibility that the Canadian Tariff Order **could** result in the NYISO having to collect and remit duties on Canadian electricity imports in the near future and potentially on short notice.⁶ As a not-for-profit, pass-through entity the NYISO could only pay such duties if it has authorization to recover the costs.⁷ It is essential for the NYISO, and its customers, to have clarity on this issue because duties on Canadian electricity would likely amount to tens of millions of dollars per year. The NYISO could face severe adverse financial consequences if it lacked clear authority to recover such costs for even a brief time period. This filing is intended to ensure that a cost recovery and allocation mechanism is in place **if** it is needed.

Because the Canadian Tariff Order was issued recently, has raised many complex and novel issues, and must be addressed quickly, it was impracticable for the NYISO to develop its proposed tariff revisions through its normal shared governance stakeholder procedures. The NYISO’s independent Board of Directors (“Board”) therefore authorized the NYISO to submit this filing under FPA section 206, which the NYISO may do without obtaining stakeholder pre-approvals.

As required by section 206, the NYISO first establishes that its existing tariffs have become unjust and unreasonable in light of the Canadian Tariff Order to the extent that they do not

⁴ See Doug Palmer, Ari Hawkins & Andrew Howard, *Trump says Canada, Mexico tariffs will go into effect March 4*, POLITICO, <https://www.politico.com/news/2025/02/27/trump-tariffs-canada-mexico-00002714> (Feb. 27, 2025).

⁵ See Canadian Tariff Order.

⁶ Other Regional Transmission Organizations (“RTOs”) may be differently situated than the NYISO with respect to the potential imposition of duties on imports of electrical energy from Canada (or Mexico). There are various reasons why other RTOs may, or may not, have the same need as the NYISO to clarify their authority to collect and remit duty payments. Other RTOs may also have valid reasons based on regional differences to propose different cost allocation regimes. However, it is apparent to the NYISO that express provisions that would enable the NYISO to collect and remit duty-related costs are needed in its case.

⁷ Capitalized terms that are not otherwise defined herein shall have the meaning specified in Section 1 of the NYISO’s OATT.

currently include express provisions governing the recovery and allocation of potential duty-related costs. The NYISO then offers its preferred replacement rate proposal. Under that proposal, the NYISO would assign duty costs to the “Subject Transaction Financially Responsible Party,” i.e., the entity that schedules an Import to New York across the Canadian border and therefore has caused any costs associated with the Transaction. As discussed below, the NYISO believes that its proposed approach is the most desirable just and reasonable option because it will minimize market impacts and best allow prices and schedules to reflect the true marginal cost of energy. The NYISO is also offering an alternative replacement rate proposal that would allocate the cost of duties to NYCA Loads and Exports on a withdrawal ratio share basis. The alternative proposal is also just and reasonable but is the NYISO’s second choice because it is not as well integrated with existing market structures, could create inefficient pricing and scheduling impacts, and does not assign costs to the entity that schedules an Import.

There is an urgent need for clarity and certainty regarding the recovery and allocation of potential duty-related costs. The NYISO is therefore requesting a shortened notice and comment period, expedited Commission action, and a February 28, 2025 effective date for its proposed tariff revisions. The NYISO also asks the Commission to establish the earliest possible refund effective date, i.e., February 28, 2025.

Finally, if, for any reason, the Commission does not accept this filing under FPA section 206, then NYISO asks in the alternative that its proposed tariff provisions be accepted as a section 205 filing under the NYISO’s “exigent circumstances” authority and made effective on March 1, 2025. This alternative approach is discussed in Section V below.

I. CANADIAN ELECTRICITY IMPORTS INTO NEW YORK AND THE NEED TO CLARIFY ISSUES RAISED BY THE CANADIAN TARIFF ORDER

A. The NYISO’s Role in Scheduling Electricity Imports from Ontario and Quebec

The United States and Canada have one of the most integrated international electric grids in the world, allowing system operators in both countries to pool resources for improved reliability and economic efficiency.⁸ The NYISO is interconnected with two Canadian system operators, Ontario’s Independent Electricity System Operator (“IESO”) and Hydro-Québec (“HQ”). The NYISO’s interties with IESO allow for up to 2500 MW of imports from Ontario to New York and the interties with HQ allow for up to approximately 2100 MW more.⁹ The interties also support

⁸ See NYISO, *NYISO Statement Regarding Tariffs on Imported Electricity* (Feb. 25, 2025), <https://www.nyiso.com/-/nyiso-statement-regarding-tariffs-on-imported-electricity-1>.

⁹ See NYISO, *NYISO Operating Study Winter 2024-2025*, at 18 (Oct. 2024).

substantial exports from New York to Canada. Trade across the interties is robust.¹⁰ In 2024, New York State imported 7.7 TWh of Canadian electricity, which was more than any other state. That electricity was valued at hundreds of millions of dollars.¹¹ These transfers are governed by interregional coordination agreements¹² and other mechanisms.

The NYISO and its Canadian neighbors also provide each other with critically important reliability support. The Canadian ties can play an important role in supporting reliability in New York State during stressed system conditions. Canadian imports are considered in the determination of New York's Installed Reserve Margin.¹³ New York likewise can provide reliability support to Ontario and Quebec. The NYISO, IESO, and HQ are also all part of the Northeast Power Coordinating Council and collaborate to maintain reliability in that region.¹⁴

As the Commission-approved Transmission Provider for the New York Control Area ("NYCA"), the NYISO is responsible for scheduling Imports from Canada and for incorporating them into the security constrained, co-optimized economic dispatch that is the foundation of the NYISO-administered markets for energy and ancillary services. Imports from Canada to the

¹⁰ See, e.g., U.S. Energy Information Administration, *U.S. electricity exports to Canada have increased since September 2023* (Nov. 12, 2024), <https://www.eia.gov/todayinenergy/detail.php?id=63684>.

¹¹ See, e.g., Killian Staines et al., *Trump tariffs include 10% carve-out for Canadian gas, power, minerals*, S&P GLOBAL (Feb. 2, 2025), <https://www.spglobal.com/commodity-insights/en/news-research/latest-news/natural-gas/020225-trump-tariffs-include-10-carve-out-for-canadian-gas-power-minerals#:~:text=New%20York%20state%20saw%20the,grid%20and%20stable%20electricity%20flows> ("The total value of Canadian electricity exported in 2024 was about CAD\$2.7 billion (\$1.9 billion), or 30 TWh, according to the Canada Energy Regulator. The country imported about 20 TWh valued about CAD\$1.2 billion. New York state saw the most power imported from Canada in 2024 at 7.7 TWh, according to data from the regulator.").

¹² See NYISO, *Interconnection Agreement Between New York Independent System Operator, Inc. and Hydro-Québec TransÉnergie*, (Oct. 21, 2002), https://www.nyiso.com/documents/20142/1397306/nyiso_hqte_agreement.pdf/78a5d5b4-0371-0b44-202b-bfec84724ee5; NYISO, *Interconnection Agreement Between Independent Electricity Market Operator and the New York Independent System Operator, Inc.*, (May 1, 2002), <https://www.nyiso.com/documents/20142/1397306/imonyiso.pdf/73afa0b0-3f20-15e2-1e61-33abf1c919d5>.

¹³ The Installed Reserve Margin is set by the New York State Reliability Council. It represents the minimum level of capacity, beyond the forecasted peak demand, which utilities and other energy providers must procure to serve consumers.

¹⁴ See Northeast Power Coordinating Council, *Northeast Power Coordinating Council, Inc. Regional Reliability Plan Version 2.0*, at 6-7 (Feb. 9, 2021), https://www.nerc.com/comm/RSTC/RTOS/NPCC_Reliability_Plan_2-9-2021.pdf.

NYCA take two main forms.¹⁵ Imports may be arranged as Locational-Based Marginal Pricing (“LBMP”) sales into the NYISO-administered energy markets. Such Imports are scheduled from the relevant Canadian Proxy Generator Bus to the NYISO reference bus. Imports may also be structured as Bilateral Transactions at a price negotiated between sellers and buyers outside of the NYISO settlements regime.

B. The Canadian Tariff Order and its Potential Impact on the NYISO

The Canadian Tariff Order imposes a 25% duty on all “articles that are products of Canada” and a 10% duty on “energy and energy resources”¹⁶ as defined in the President’s Executive Order Declaring a National Energy Emergency.¹⁷ It is currently unclear whether Canadian imports of electrical energy, or any other electricity-related product, are to be considered “products of Canada.” The Harmonized Tariff Schedule of the United States (“HTSUS”) identifies “electrical energy” in the schedule of dutiable articles (albeit at a current tariff rate of 0%).¹⁸ But the HTSUS also explicitly exempts “electrical energy” from “entry requirements”¹⁹ subject to the possible adoption of electricity-specific regulations. The HTSUS specifies further that any such regulations are to be developed by the United States Department of the Treasury (“Treasury”), not United States Customs and Border Protection (“CBP”) which administers the rest of the HTSUS.

In addition, legal precedent indicates that tariffs are only applicable to “tangible” products and that electricity is intangible in nature and therefore beyond the scope of tariff duties.²⁰ The

¹⁵ The NYISO may also receive Imports of Canadian electrical energy via Wheels Through Transactions that cross neighboring systems before entering New York or via Emergency Energy Transactions.

¹⁶ Canadian Tariff Order, § 2.

¹⁷ Exec. Order No. 14156, 90 Fed. Reg. 8433 (Jan. 20, 2025) (defining “energy” and “energy resources” as “crude oil, natural gas, lease condensates, natural gas liquids, refined petroleum products, uranium, coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals, as defined by 30 U.S.C. 1606 (a)(3).”).

¹⁸ Harmonized Tariff Schedule of the United States, ch. 27, U.S. Int’l Trade Comm’n, available at <https://hts.usitc.gov> (last visited Feb. 27, 2025).

¹⁹ *Id.* at n. 6(b) (“Electrical energy shall not be subject to the entry requirements for imported merchandise set forth in section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. 1484), but shall be entered on a periodic basis in accordance with regulations to be prescribed by the Secretary of the Treasury.”).

²⁰ *See, e.g., ClearCorrect Operating v. Int’l Trade Com’n*, 810 F. 3d 1283, 1298 (2015) (“Tariff Schedules have continued to limit articles to tangibles. The dutiable schedules in the Tariff Act of 1930 were later replaced in 1963 with the Tariff Schedule of the United States, Pub.L. 87-456. Accompanying this revision was the Tariff Classification Study Submitting Report. In this report, the Commission wrote, ‘General headnote 5 sets forth certain intangibles which, under various established customs practices, are not regarded as articles subject to treatment under the

United States International Trade Commission has also recently stated that “imports of electrical energy are not considered to be subject to the tariff laws of the United States.”²¹

If Canadian electrical energy is held to be subject to the Canadian Tariff Order it is not yet known whether a 25% or 10% duty rate would apply. There are also no established CBP mechanisms for measuring or valuing import of Canadian electrical energy or for assessing and collecting duties. The traditional procedures for taxing tangible goods do not appear to be directly applicable to electricity. At a minimum, it seems that complex electricity-specific rules would need to be developed before duties could be collected. Furthermore, it is yet to be determined whether the NYISO would be deemed to be an “importer of record,”²² i.e., the entity responsible for paying import duties to CBP or to another federal revenue authority.

No precedent or instruction from the federal government has yet clarified any of these issues. The NYISO is actively seeking further guidance from relevant federal authorities and coordinating with other Regional Transmission Organizations that face the same questions.

II. THE NEED FOR COMMISSION ACTION UNDER FPA SECTION 206 AND THE NYISO’S PROPOSED REPLACEMENT RATES

Commission and judicial precedent require a party seeking tariff revisions under FPA section 206 to first show that existing tariff language is unjust and unreasonable. The Commission is then responsible for establishing a just and reasonable replacement rate. The Commission may adopt replacement rates that are proposed by a filing party or chosen by the Commission itself.²³

A. The Canadian Tariff Order Has Made the NYISO Tariffs Unjust and Unreasonable to the Extent that They Do Not Expressly and Clearly Establish

tariff schedules.’ Id. at 18. This subsection includes items such as electricity, securities, and similar evidences of value. Id. at 12. The Tariff Schedule of the United States was in turn replaced by the Harmonized Tariff Schedule of the United States in 1988, pursuant to the Omnibus Trade and Competitiveness Act. Pub.L. 100-418 § 1206, 102 Stat. 1151, codified at 19 U.S.C. § 3006. While this schedule included a heading for electrical energy, it specifically removed it from the purview of section 484 of the Tariff Act of 1930 and placed its regulation purely in the hands of the Secretary of the Treasury. Section 484 regulates the entry requirements under the Tariff Act. This succession of tariff schedules provides further evidence that the Act’s scheme was not meant to include intangibles.”).

²¹ U.S. Int’l Trade Comm’n, *Renewable Electricity: Potential Economic Effects of Increased Commitments in Massachusetts*, at 36 (Jan. 2021), <https://www.usitc.gov/publications/332/pub5154.pdf>.

²² See 19 U.S.C. § 1484(a)(2)(B).

²³ *Emera Maine v. FERC*, 854 F.3d 9, 24 (D.C. Cir. 2017) (“[U]nlike section 205, section 206 mandates a two-step procedure that requires FERC to make an explicit finding that the existing rate is unlawful before setting a new rate.”).

the NYISO's Ability to Collect and Remit Potential Duties on Canadian Electrical Energy

Action under section 206 is needed now. In light of the Canadian Tariff Order, it has become unjust and unreasonable for the NYISO tariffs to lack provisions expressly addressing the recovery and allocation of duty costs, as well as potential credit impacts. As noted above, the NYISO's view is that it should not have any role in implementing the Canadian Tariff Order and should not be responsible for paying duties to CBP or to any other federal authority.

However, it is possible that the NYISO's position will not prevail. In that case the NYISO must have tariff mechanisms in place clearly empowering it to collect and remit duties. If the NYISO does not have the authority to recover duty-related costs from its customers, it could be exposed to tens of millions of dollars in charges that it would have no ability to pay. In that scenario, the NYISO would face adverse consequences, including possible bankruptcy and financial restrictions on its ability to import Canadian electrical energy needed for reliability. Because of the limits on the Commission's ability to make tariffs retroactively effective it is also imperative that the NYISO act now to establish the earliest possible effective date (and refund effective date). Adding transparent provisions to the Tariff would provide the NYISO, and its stakeholders, with needed certainty regarding their respective obligations and roles in the event that duties are imposed on the NYISO. The absence of clear tariff provisions to address these issues renders the NYISO's existing tariff unjust and unreasonable.

The Commission should not conclude that the NYISO's concerns are merely "speculative" or otherwise somehow insufficient to support the required showing of unjustness and unreasonableness. The Canadian Tariff Order nearly went into effect in early February just days after it was announced. It is now scheduled to go into effect on March 4. Given this context, and the President's many statements favoring the imposition of various tariffs, it is reasonably foreseeable that the NYISO could be required to make duty payments to a federal revenue authority in the near future. Because the volume and value of electrical energy imports from Canada is so great, it is also reasonably foreseeable that the NYISO could suffer severe financial consequences if it lacks a tariff mechanism to recover duty costs. The NYISO cannot reasonably wait until after duties go into effect to propose a cost recovery mechanism. Doing so would expose the NYISO to substantial financial risk if duties were implemented before the NYISO had clear authority²⁴ to recover duty-related costs and to allocate them in an efficient way.

²⁴ The NYISO may have implied authority to recover the costs of duties on Canadian electrical energy under its currently effective OATT and reserves the right to assert that it does. For example, Section 6.1 of OATT Rate Schedule 1 authorizes the NYISO to recover among other things, "[c]osts related to the ISO's administration and operation of the LBMP market and all other markets administered by the ISO, "[c]osts related to the ISO's administration of Control Area Services," "[c]osts related to the maintenance of reliability in the NYCA," and "[c]osts related to the provision of Transmission Service." However, the existence of these provisions does not diminish the urgency of the need for express tariff provisions to avoid ambiguity, and potential

As discussed below in Section III, the NYISO is also proposing to clarify its authority to account for the impact of potential import duties on its credit requirements applicable to Transmission Customers with load-serving obligations.

B. The NYISO's Preferred and Alternative Proposed Replacement Rates

The NYISO's preferred replacement rate would expressly authorize the NYISO to assign duty costs to the individual "Scheduled Transaction Financially Responsible Party" that schedules imports of electrical energy from Canada through the NYISO's market scheduling systems. Assigning duty costs to Scheduled Transaction Financially Responsible Parties is just and reasonable because it assigns costs to the entities that cause imports to occur. This approach is consistent with the Commission's established cost causation principles.²⁵ In addition, assigning costs to Scheduled Transaction Financially Responsible Parties is fully consistent with the NYISO's existing market design and with market efficiency. Assigning the duty to the Scheduled Transaction Financially Responsible Party incentivizes that entity to reflect duty costs in their offers. The resulting prices and schedules will align the marginal cost of supplying electric energy with the willingness to pay for electric energy and therefore are likely to be more economically efficient than possible alternative approaches. For these reasons, the Commission should find the NYISO's preferred replacement rate to be just and reasonable.

The initial process for calculating, paying, and collecting duties under the NYISO's preferred replacement rate would initially be administered manually. If the NYISO is found to be required to collect and remit duties for an extended period, it would consider developing software revisions to automate implementation. The NYISO anticipates that, at least initially, settlements under the preferred replacement rate would occur on a monthly basis.

If the Commission does not accept the preferred approach, then the NYISO proposes an alternative replacement rate as a second-best, but still just and reasonable, alternative. Under the second proposal, the NYISO would assign duty-related costs to Transmission Customers on a pro rata withdrawal basis. The NYISO's OATT currently includes pro rata cost allocation methods that the Commission has found to be just and reasonable for other purposes.²⁶ A pro rata allocation

exposure to unrecoverable costs, in light of the Canadian Tariff Order. Moreover, even if the NYISO could recover duty-related costs under Rate Schedule 1 it would, absent tariff changes, be required to allocate 72% of them to Withdrawal Billing Units and 28% to Injection Billing Units. See NYISO OATT, Section 6.1.2.2. The NYISO believes that it would applying the "78/22" allocation to potential duties on electrical energy from Canada would be much inferior to either of the replacement rates proposed herein.

²⁵ See *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004) (the cost causation principle "requir[es] that all approved rates reflect to some degree the costs actually caused by the customer who must pay them.") (internal quotations and citations omitted).

²⁶ See e.g., NYISO OATT, §§ 31.5.3.2.4, 31.5.5.4.3; see also *Order on Rehearing and Compliance*, 148 FERC ¶ 61,044, P 331 (2014) (accepting NYISO's default load ratio share cost

approach would not assign duty costs directly to the entities that cause them. It would also not be as integrated with existing market mechanisms as the NYISO's preferred replacement rate. But the NYISO's alternative approach would enable the NYISO to recover costs from entities that *benefit* from the availability of electrical energy from Canada. Moreover, given the nature of electrical energy, which makes it impossible to determine whether particular customers are using Canadian or American electricity in a pool-based system, there is no practical way to develop a non-pro-rata allocation (other than making assignments to Subject Transaction Financially Responsible Entities). Parties buying energy and ancillary services via the NYISO-administered auctions are buying at the single auction-clearing price. There is no practical way for the NYISO to determine whether individual customers are receiving more or less Canadian electrical energy than its other customers. In short, the NYISO's second choice replacement rate satisfies the principle that cost allocation must be at least "roughly commensurate" with benefits²⁷ and is just and reasonable.

If the NYISO's second choice replacement rate is implemented, it may become necessary for the NYISO to develop additional changes to address any possible impacts on market efficiency and cost allocation after it gains experience administering the proposed rules.

Under either of its proposed replacement rates, the NYISO would determine the amount of Canadian electrical energy subject to tariffs based on "Real-Time Scheduled Imports" originating from "Duty Eligible Proxy Generator Buses." It is reasonable to look to the amount of energy scheduled to cross the border in real-time for purposes of applying potential import duties.

Real-time scheduled Imports, Import Bilateral Transactions for Energy, and Wheels Through injecting energy at a Duty Eligible Proxy Generator Bus would be "Subject Transactions" upon which duties would be assessed under the NYISO's preferred replacement rate. Real-Time Scheduled Transactions at other Proxy Generator Buses, e.g., the Sandy Pond bus that the NYISO

allocation method as "compliant with Regional Cost Allocation Principles 1 (all costs must be allocated roughly commensurate with benefits) and 2 (those that receive no benefit must not be involuntarily allocated costs).")

²⁷ See, e.g., *Southwest Power Pool, Inc.*, 187 FERC ¶ 61,123 (2024) at P 53 (2024) ("we emphasize that cost allocation precedent does not require such 'exacting precision' in the Commission's cost allocation decisions, only that the costs of transmission facilities be allocated in a manner that is at least roughly commensurate to those that benefit.") (internal citation omitted); See generally *Illinois Com. Comm'n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009) ("We do not suggest that the Commission has to calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars.").

uses to model Transactions originating from ISO New England, Inc., would not be “Subject Transactions” no matter the specific Transaction type involved.

At the same time, the NYISO is proposing to calculate the price of Canadian electricity subject to duties using Day-Ahead LBMPs. There may be some discrepancy in using a Day-Ahead price for real-time Transactions. But any inconsistency is greatly outweighed by the multiple advantages of using Day-Ahead LBMPs. Day-Ahead LBMPs represent a financially binding price for electricity sales at the relevant time and location. They are a more “liquid” price value than Real-Time LBMP values which lack a similarly intentional valuation of the electric energy because the Real-Time market acts an energy imbalance market. In addition, import duties are inherently uni-directional in nature which does not readily accommodate balancing settlements (i.e., equivalent payments and costs in both direction). It is necessary to select a single applicable quantity and price value. Choosing Day-Ahead LBMPs will allow parties to account for both Day-Ahead and Real-Time transaction costs in their offers. By contrast, using real-time prices to calculate duties would create a duty-cost risk that could not be reflected in Day-Ahead Market offers. Finally, Day-Ahead LBMPs are a reasonable “proxy” for real-time prices in this context given that day-ahead and real-time prices generally converge in the NYISO-administered markets and are thus often similar to each other.²⁸

As noted below, the NYISO is proposing that the Commission make a replacement rate immediately effective as of the date of this filing. However, the proposed tariff revisions would not require the NYISO to begin paying duties or collecting them from Subject Transaction Financially Responsible Parties or Transmission Customers unless the NYISO determines in good faith that it is actually under a legal obligation to pay duties. This approach will allow the NYISO to await further guidance from the federal government concerning the NYISO’s obligations, if any, under the Canadian Tariff Order. If the Canadian Tariff Order is never effectuated, or if the NYISO learns that it need not collect and remit duties, then there will never be a need to use the tariff revisions proposed herein.

The NYISO does not believe that the limits on the Commission’s authority to modify tariff filings under *NRG Power Marketing, LLC v. FERC (NRG)*²⁹ apply to revisions proposed under FPA section 206. Nevertheless, to the extent necessary, the NYISO consents to the Commission imposing conditions on its acceptance or approval of this filing, including modifications to the NYISO’s proposed replacement rates. Indeed, the NYISO’s understanding that the Commission would have broader authority to conditionally accept this filing under section 206 than section 205

²⁸ NYISO's independent Market Monitoring Unit, Potomac Economics, quantifies the "Price Convergence between Day-Ahead and Real-Time Markets" in its annual State of the Market Report (SOM). The 2024 SOM report shows that average Day-Ahead and real-time zonal prices were within several percent of each other in the West Zone and North Zone (i.e., the locations of Canadian interties) over the two most recent years of data.

²⁹ *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017).

is a principal reason why it is filing under section 206 and only filing under section 205 in the alternative.

III. DESCRIPTION OF THE NYISO'S PROPOSED TARIFF REVISIONS

The NYISO proposes the following revisions to the OATT and Services Tariff.

A. New Defined Terms

The NYISO proposes to add several new defined terms to Section 1 of the OATT.

A "Duty Eligible Proxy Generator Bus" would be defined as, "[a] Proxy Generator Bus that represents interties between the NYCA and Ontario, Canada or Quebec, Canada." This definition would encompass the existing Canadian Proxy Generator Buses, i.e., IESO, HQ-Chateaugay, and HQ-Cedars. Any Proxy Generator Buses representing Canadian energy sources would automatically be captured by this definition.

The NYISO's preferred replacement rate would apply to "Subject Transactions," which would be defined as "[a]n Import or Wheel Through at a Duty Eligible Proxy Generator Bus that is subject to charges under Schedule 22. Subject Transactions include all real-time scheduled Imports of Energy, Import Bilateral Transactions for Energy, and Wheels Through that inject Energy at a Duty Eligible Proxy Generator Bus. Subject Transactions do not include real-time scheduled Imports or Wheels Through that inject Energy at other Proxy Generator Buses." The definition ensures that duties will not be assigned to Transactions that do not involve Canadian electrical energy.

The term "financially responsible party" appears in various NYISO informational documents and agreements. Its meaning is well understood by stakeholders. But the term "financially responsible party" is not currently defined in the NYISO's tariffs. The NYISO is proposing to build on the "financially responsible party" concept by adding a new tariff definition "Subject Transaction Financially Responsible Party" to identify entities that cause Subject Transactions to occur and thus would be assigned duties for Subject Transactions under the NYISO's preferred replacement rate. The new definition would be, "[t]he Customer or Transmission Customer that is paid or charged for an Import or Wheel Through that is a Subject Transaction, and that will be charged by the ISO for its Subject Transaction in accordance with Rate Schedule 22 of the ISO OATT."

The NYISO is also adding its new defined terms to Section 2 of the Services Tariff to ensure consistency between the Services Tariff and the OATT.

B. New OATT Schedule 22 and Services Tariff Rate Schedule 9

The NYISO would create a new Schedule 22 of the OATT. New Section 1 of Schedule 22 would unambiguously establish the NYISO's authority to collect, remit, and recover costs related to duties on imports of electrical energy from Canada. It would read:

The ISO is authorized to collect any rate of duty (or other any other form of duty or charge) that may be assessed on imports of electrical energy from Canada if the ISO determines in good faith that it is lawfully obliged to remit such duties or charges to the appropriate federal revenue authority under the February 1, 2025 Executive Order “Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border,” as it may be amended, or under any other Executive Order, federal law, or other legally binding directive, that imposes a rate of duty (or any other form of duty or charge) on such imports.

Section 2 of Schedule 22 would set forth the NYISO’s preferred replacement rate proposal. It would state that:

The Subject Transaction Financially Responsible Party for each Subject Transaction shall pay the ISO the full amount of any duty or related charge applicable to a Subject Transaction. The amount of the payment shall be the product of: (a) the Subject Transaction MWh; (b) the applicable Day-Ahead LBMP at the relevant Duty Eligible Proxy Generator Bus; and (c) the rate of duty specified by federal law as interpreted by the relevant federal revenue authority. The ISO shall remit all charges collected to the appropriate federal revenue authorities. Nothing in this Schedule 22 shall result in a payment to a Subject Transaction Financially Responsible Party if the Day-Ahead LBMP at the relevant Duty Eligible Proxy Generator Bus is negative.

Section 3 would create an exception to Section 2 for Emergency Energy Transaction purchases. In the event that the NYISO needs to import electrical energy from Canada in an emergency the Import would be scheduled under the OATT provision, or inter-regional coordination agreement, applicable to the particular emergency. In such a scenario, the NYISO would be acting as the purchaser and, in effect, as a de facto Subject Transaction Financially Responsible Party. Consequently, the NYISO could not assign the duty-related costs of such Transactions to any other party. The NYISO would instead propose to recover the costs of any duties applied to Emergency Energy Transactions under the established mechanisms already in its Tariffs and coordination agreements for recovering the cost of Emergency Energy.

The text of proposed Section 3 would read:

Notwithstanding Section 6.22.2 above, if the ISO makes an Emergency Energy purchase from the Ontario Independent Electricity System Operator or from Hydro-Québec or their successors, then the ISO shall collect an amount that shall be the product of: (a) the purchased Emergency Energy (MWh), (b) the Energy cost paid by the ISO (\$/MWh), and (c) the rate of duty specified by federal law as interpreted by the relevant federal revenue authority. The ISO shall allocate this amount using the same method used to allocate the cost of the underlying Emergency Energy purchase under the applicable tariff provision or coordination agreement. The ISO shall remit all charges collected to the appropriate federal revenue authorities..

Section 4 would establish the NYISO's alternate proposed replacement rate in case it is needed as a backstop. Because the NYISO prefers the Section 2 approach, i.e., assigning costs to Subject Transaction Financially Responsible Entities, Section 3 would only be implemented to the extent that the Commission does not accept the preferred replacement rate. Section 3 would state that:

To the extent that the ISO is not authorized by the Commission to recover costs identified under Section 6.22.1 through the procedure described in Section 6.22.2, the ISO shall charge, and Transmission Customers taking service under the Tariff shall pay, the full amount of any duty-related costs that are calculated but not recoverable under those sections. Duty-related costs that fall under this section shall be allocated on a pro rata basis based on each Transmission Customer's Withdrawal Billing Units, including Withdrawals Billing Units to supply Station Power, for the relevant Billing Period. The ISO shall remit all charges collected to the appropriate federal revenue authorities.

Section 5 of Schedule 22 would address possible scenarios in which duties on Canadian electrical energy were deemed to apply to NYISO products other than Energy (e.g., capacity). The NYISO does not anticipate that this will occur, e.g., capacity arguably falls outside the scope of "electrical energy" under the HTSUS and is seemingly even more intangible in nature than electricity. Nevertheless, the NYISO needs to ensure that it has the ability to recover duty costs that might be applied to such products. The NYISO is therefore proposing language that would let it address such duties on non-Energy Products through either: (i) the ISO Procedures, i.e., manuals and other non-tariff documents that set forth implementation details that need not be on file under the Commission's "rule of reason;" or (ii) future tariff enhancements that might be implemented as of the effective date of this filing per the notice provision discussed below.

Finally, Section 6 of Schedule 22 would specify that, "all of the provisions of this Schedule 22 are tentative, subject to adjustment, and intended to be eligible for retroactive adjustment to the maximum extent permitted by law under the judicially recognized 'notice exception' to the filed rate doctrine and the rule against retroactive ratemaking." The purpose of this language is to maximize the Commission's ability to set a retroactive effective date, back to the effective date of this filing, to tariff enhancements that the NYISO may propose in the future. The NYISO understands that this provision would only be relevant if the Commission were to accept Schedule 22 under FPA section 205 instead of section 206 as per Section V of this transmittal letter. Judicial precedent holds the inclusion of such language may establish an exception to the filed rate doctrine and the rule against retroactive ratemaking that could allow future tariff revisions to be made retroactively effective back to the effective date of this filing.³⁰ The NYISO is seeking this unusual

³⁰ See *Waiver of Tariff Requirements*, 171 FERC ¶ 61,156, at P 3 & n.10 (2020) (citing *Consolidated Edison Co. of N.Y. v. FERC*, 347 F.3d 964, 969 (D.C. Cir. 2003)); *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791, 795-97 (D.C. Cir. 1990)); *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,109, at P 162 (2023) (granting waiver of 60-day notice requirement); see also *Cogentrix Energy Power Mgmt., LLC v. FERC*, 24 F.4th 677, 685 (D.C. Cir. 2022) (holding

degree of flexibility because there is such great uncertainty concerning the potential scope, timing, and impacts of duties on Canadian electrical energy.

The NYISO is also proposing to add a new Schedule 9 to the Services Tariff to cross-reference OATT Schedule 22 and thereby ensure the consistency of the two documents.

C. Credit-Related Tariff Revision

The NYISO is proposing to amend Section 26.4.2.1 of the Services Tariff to expressly establish that it has the authority to adjust its credit requirements to the extent necessary to account for the imposition of duties on electric energy. Section 26.4 governs the NYISO's calculation of Operating Requirements and Bidding Requirements. The Operating Requirement is "a measure of a Customer's expected financial obligations to the ISO based on the nature and extent of that Customer's participation in ISO-Administered Markets." A Customer must "allocate Unsecured Credit, where allowed, and/or provide collateral in an amount equal to or greater than its Operating Requirement." The NYISO calculates Customers' Operating requirements by summing the values of various "components," each of which is determined used a tariff-prescribed formula. One of these values is the "Energy and Ancillary Services Component" which is calculated in accordance with a formula set forth in Section 26.4.2.1. The NYISO proposes to revise the opening sentence of Section 26.4.2.1 as follows.

The Energy and Ancillary Services Component shall be equal to the value calculated using the applicable formula below, subject to any adjustment the ISO may deem necessary in connection with the imposition of duties on electric energy under Schedule 22:

IV. REQUEST FOR WAIVER OF COMMISSION RULE 206

To the extent that the Commission deems them to be applicable to this filing, the NYISO respectfully requests waiver of any part of the Commission's regulations necessary to process this filing, including but not limited to Rule 206 of the Commission's rules of practice and procedure.³¹ Rule 206 establishes requirements applicable to adversarial section 206 complaints that are generally inapplicable to the context of this filing.

that the filed rate doctrine does not extend to "cases in which buyers are on adequate notice that resolution of some specific issue may cause a later adjustment to the rate being collected at the time of service." (citing *Nat. Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1075 (D.C. Cir. 1992); *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791, 797 (D.C. Cir. 1990) (the notice exception "changes what would be purely retroactive ratemaking into a functionally prospective process by placing the relevant audience on notice at the outset that rates being promulgated are *provisional only and subject to later revision.*") (emphasis added).

³¹ 18 C.F.R. § 385.206 (2025).

**V. ALTERNATIVE REQUEST UNDER THE NYISO'S FPA SECTION 205
"EXIGENT CIRCUMSTANCES" FILING AUTHORITY**

If the Commission, for any reason, declines to accept the NYISO's proposed tariff revisions under FPA section 206, the NYISO respectfully requests in the alternative that the Commission accept them under FPA section 205.³² The NYISO ordinarily must obtain super-majority stakeholder approval before submitting section 205 filings. However, Section 19.01 of the Independent System Operator Agreement ("ISO Agreement") enables the NYISO to file tariff revisions under FPA section 205 that may remain in effect for up to 120 days without first obtaining stakeholder approval.

The NYISO is making this alternative request in case the Commission determines that the Canadian Tariff Order does not render the NYISO's existing tariffs unjust and unreasonable. If the Commission reaches that conclusion, it could still accept the NYISO's proposed tariff revisions under FPA section 205 simply by finding that the NYISO's proposed revisions are just and reasonable.³³ The NYISO respectfully submits that it has made the necessary showing in Sections II and III above for the Commission to accept either of its proposed replacement rates under the section 205 standard of review.

If the Commission acts under FPA section 205, the NYISO consents to the Commission imposing conditions on its acceptance of its proposed tariff revisions to the greatest extent lawfully permitted under *NRG*. To the extent necessary, the NYISO also requests waiver of cost-of-service filing requirements under Part 35 of the Commission's regulations because they are inapplicable to a filing of this kind.

**VI. REQUEST FOR SHORTENED NOTICE AND COMMENT PERIOD, FOR THE
EARLIEST POSSIBLE EFFECTIVE DATE AND REFUND EFFECTIVE DATE
(IF APPLICABLE), AND FOR EXPEDITED ACTION**

The NYISO respectfully requests that the Commission establish a shortened notice and comment period of ten calendar days, i.e., until March 10, 2025. The Commission routinely adopts shortened comment periods when circumstances warrant. Given the urgent need for certainty regarding the NYISO's ability to recover costs related to potential duties on Canadian electrical energy, including the potential that the NYISO could be subjected to substantial charges that it would be unable to pay, a shortened comment period is reasonable in the context of this

³² 16 U.S.C. § 824e.

³³ See 16 U.S.C. § 824d; *New York State Pub. Serv. Comm'n v. FERC*, 104 F.4th 886, 891 (D.C. Cir. 2024) ("FERC has construed its Section 205 authority as 'limited to an inquiry into whether the [proposed] rates ... are reasonable,' without regard to whether the rates are 'more or less reasonable' than other possible rate designs.") (quoting *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984)); *Atl. City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002) ("FERC plays 'an essentially passive and reactive' role under section 205.") (quoting *City of Winnfield v. FERC*, 744 F.2d 871, 876 (D.C. Cir. 1984)).

proceeding. The NYISO's stakeholders have also already had notice that the NYISO would make this filing, including a detailed presentation on February 25.

The NYISO also asks that the Commission act expeditiously to issue an order accepting this filing within forty calendar days, i.e., by April 9, 2025. Expedited action is justified for all of the reasons discussed in this filing regarding the potential financial risks to the NYISO, the uncertainty associated with the Canadian Tariff Order, and the need to clarify the responsibilities of the NYISO and market participants if the NYISO is required to pay duties. Expedited Commission action is justified because if the Commission requires the NYISO to make changes to its proposed tariff revisions it will need time to implement them. The longer any such changes are delayed the greater the risk that the NYISO might not have rules in place that fully enable it to recover duty-related costs.

To the extent that the Commission acts on this filing under FPA section 205, expedited action is also warranted under the Commission's *Guidance Order on Expedited Tariff Revisions for Regional Transmission Organizations and Independent System Operators* ("Guidance Order").³⁴

Finally, the Commission should, if acting under FPA section 206, make the NYISO's proposed revisions effective immediately and establish an immediate effective date for NYISO's proposed revisions and an immediate refund effective date, i.e., February 28, 2025. Doing so is necessary given the circumstances that the NYISO is facing and will maximize protection both to the NYISO and to all market participants.

If the Commission acts under FPA section 205, then the NYISO respectfully submits that there is a "good cause" for a next day effective date, i.e., March 1, 2025, under Section 35.11 of the Commission's regulations given the NYISO's need for its tariff revisions to become effective before duties on Canadian electrical energy are imposed.

VII. BOARD APPROVAL AND STAKEHOLDER OUTREACH

On February 11, 2025, the NYISO Board authorized the NYISO to "to amend the NYISO tariffs to establish appropriate authority to collect and remit such duties as may be determined to be the legal responsibility of the NYISO . . . [and to make] such other requests for relief as may be necessary to satisfy or otherwise resolve any financial or other obligations arising from the

³⁴ *Guidance Order on Expedited Tariff Revisions for Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,009, P 2 (2005) (requiring that tariff flaws subject to expedited revision procedures meet the following criteria: "(i) materially adversely impact the market (due to the unanticipated workings of the tariff or unanticipated actions by market participants); (ii) require prompt action to prospectively revise the tariff to remove the ability to cause such material adverse impacts; and (iii) be susceptible to a clear-cut revision or interim tariff provision or market rule").

imposition of tariffs on imports of Canadian electricity.” The Board authorized the NYISO to proceed under either section 206 or its section 205 exigent circumstances authority.

The NYISO is not required to secure stakeholder authorization to make an FPA section 206 filing (or a section 205 exigent circumstances filing). However, consistent with its commitment to shared governance principles the NYISO engaged with stakeholders before making this submission. On February 4, the NYISO made a statement to stakeholders confirming that it was reviewing the Canadian Tariff Order and seeking clarification regarding its potential applicability to the NYISO. Subsequently, on February 25, the NYISO made a presentation to a joint meeting of its Installed Capacity Working Group and Market Issues Working Group that described this filing and invited questions. This filing reflects stakeholder feedback from the February 25 meeting.

The NYISO has also discussed this filing with its independent Market Monitoring Unit, Potomac Economics, Ltd (“MMU”). The NYISO anticipates that the MMU will make a filing of its own supporting the NYISO’s proposal.

VIII. LIST OF DOCUMENTS SUBMITTED

The NYISO respectfully submits the following documents with this filing letter:

1. A clean version of the NYISO’s proposed OATT revisions (“Attachment I”);
2. A blacklined version of the NYISO’s proposed OATT revisions (“Attachment II”);
3. A clean version of the NYISO’s proposed Services Tariff revisions (“Attachment III”);
and
4. A blacklined version of the NYISO’s proposed Services Tariff revisions (“Attachment IV”).

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X. SERVICE

A complete copy of this filing will be posted on the NYISO's website at www.nyiso.com. The NYISO will send an electronic link to this filing to the official representative of each of its customers and to each participant on its stakeholder committees. In addition, the NYISO will send an electronic copy of this filing to the New York Public Service Commission and to the New Jersey Board of Public Utilities.

³⁵ To the extent necessary, the NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2024) to permit service on counsel in both Washington, D.C. and Richmond, VA.

XI. CONCLUSION

The NYISO respectfully requests that the Commission act expeditiously to accept the NYISO's proposed tariff revisions under FPA section 206 and establish an immediate effective date for its proposed revisions and the same refund effective date, i.e., February 28, 2025. In the alternative, the NYISO requests that its proposed revisions be accepted under its FPA section 205 exigent circumstances authority with the earliest possible effective date, i.e., March 1, 2025.

/s/ Ted Murphy

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