

191 FERC ¶ 61,030  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Mark C. Christie, Chairman;  
Willie L. Phillips, David Rosner,  
Lindsay S. See, and Judy W. Chang.

New York Independent System Operator, Inc.

Docket Nos. ER25-1462-000  
EL25-62-000

ORDER ACCEPTING TARIFF REVISIONS, SUBJECT TO CONDITION, AND  
DISMISSING COMPLAINT

(Issued April 14, 2025)

1. On February 28, 2025, the New York Independent System Operator, Inc. (NYISO) filed, pursuant to section 206 of the Federal Power Act (FPA)<sup>1</sup> or, in the alternative, section 205 of the FPA,<sup>2</sup> revisions to its Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff)<sup>3</sup> to govern NYISO's collection and allocation of costs related to the potential imposition of duties on imports of electrical energy from Canada and to allow NYISO to adjust customer credit requirements as needed to address ad valorem rate of duty (import duty)-related costs. In this order, we accept NYISO's proposed OATT and Services Tariff revisions under FPA section 205, to be effective March 1, 2025, as requested, subject to condition, as discussed below. We also direct NYISO to (1) submit an informational filing that includes any legal and/or technical guidance and related documentation from the relevant federal authorities establishing NYISO's good faith belief that it is lawfully obliged to remit import duties on Canadian electricity, triggering NYISO's collection authority, as soon as practicable after receiving such guidance and, (2) if NYISO begins paying import duties on Canadian electricity imports, submit informational filings every six months for three years from the date that payments begin quantifying the costs of the import duties in NYISO.<sup>4</sup> Finally, we dismiss as moot NYISO's complaint under FPA section 206

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<sup>1</sup> 16 U.S.C. § 824e.

<sup>2</sup> *Id.* § 824d.

<sup>3</sup> *See* Appendix.

<sup>4</sup> 16 U.S.C. § 825c.

alleging that its tariffs are unjust and unreasonable for lack of express provisions governing the collection and allocation of potential import duty-related costs.

## **I. Background**

2. NYISO is interconnected with two Canadian system operators: Ontario's Independent Electricity System Operator and Hydro-Québec.<sup>5</sup> NYISO's interties allow for up to 2,500 megawatts (MW) of imports from Ontario's Independent Electricity System Operator and up to approximately 2,100 MW of imports from Hydro-Québec—as well as substantial exports from New York to Canada. In 2024, New York State imported 7.7 terawatt-hours (TWh) of Canadian electricity—more than any other state—valued at hundreds of millions of dollars.

3. NYISO states that its Canadian ties support reliability in New York State during stressed system conditions, and that Canadian imports are considered in determining New York's Installed Reserve Margin.<sup>6</sup> NYISO explains that it can likewise provide reliability support to Ontario and Quebec. NYISO explains that, as the transmission provider, it 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.

4. On February 1, 2025, the President of the United States issued an Executive Order (Canadian Tariff Executive Order) imposing a 25% import duty on “[a]ll articles that are products of Canada” and a 10% import duty on “energy and energy resources.”<sup>7</sup> On February 3, 2025, the President of the United States issued an Executive Order pausing the implementation of the Canadian Tariff Executive Order until March 4, 2025.<sup>8</sup> The Canadian Tariff Executive Order took effect on March 4, 2025.<sup>9</sup> On March 6, 2025, the President of the United States issued an Executive Order amending the tariffs on articles that are products of Canada to exempt articles entered “free of duty” under the terms of Harmonized Tariff Schedule of the United States (Harmonized Tariff Schedule) sections

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<sup>5</sup> Filing, Transmittal Letter at 3-4.

<sup>6</sup> *Id.* at 4. Capitalized terms not defined herein shall have the meaning set forth in the NYISO OATT and Services Tariff.

<sup>7</sup> Exec. Order No. 14,193, 90 Fed. Reg. 9113, § 2(a)-(b) (Feb. 1, 2025).

<sup>8</sup> Exec. Order No. 14,197, 90 Fed. Reg. 9183, § 3 (Feb. 3, 2025).

<sup>9</sup> Notice of Implementation of Additional Duties on Products of Canada Pursuant to the President's Executive Order 14193, Imposing Duties To Address the Flow of Illicit Drugs Across Our Northern Border, 90 Fed. Reg. 11423 (Mar. 6, 2025).

related to the Agreement between the United States of America, United Mexican States, and Canada, which took effect on March 7, 2025.<sup>10</sup>

## **II. Filing**

5. NYISO proposes revisions to its OATT and Services Tariff under section FPA section 206, or in the alternative, FPA section 205.<sup>11</sup> NYISO proposes two potential mechanisms to establish NYISO's ability to collect and allocate potential import duties on Canadian electrical energy. NYISO requests that the Commission accept its proposed tariff revisions under FPA section 205 if the Commission declines to grant NYISO's complaint under FPA section 206 because it determines that the Canadian Tariff Executive Order does not render NYISO's existing tariffs unjust and unreasonable. NYISO explains that, while it ordinarily must obtain super-majority stakeholder approval before submitting FPA section 205 filings, section 19.01 of the Independent System Operator Agreement allows NYISO to file tariff revisions under FPA section 205 that may remain in effect for up to 120 days without first obtaining stakeholder approval.<sup>12</sup>

### **A. Canadian Tariff Executive Order Applicability**

6. NYISO states that it is unclear whether Canadian imports of electrical energy, or other electricity-related products, are to be considered products of Canada, and therefore subject to the import duties imposed in the Canadian Tariff Executive Order.<sup>13</sup> NYISO notes that the Harmonized Tariff Schedule identifies "electrical energy" in the schedule of dutiable articles (albeit at a current tariff rate of 0%).<sup>14</sup> NYISO also notes, however, that the Harmonized Tariff Schedule explicitly exempts "electrical energy" from "entry requirements" subject to the possible adoption of electricity-specific regulations to be developed by the United States Department of the Treasury (rather than United States

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<sup>10</sup> Exec. Order No. 14,231, 90 Fed. Reg. 11785 (Mar. 11, 2025); *see also* Amendment to Duties to Amendment to Notice of Implementation of Additional Duties on Products of Canada Pursuant to the President's Executive Order 14,193, Imposing Duties To Address the Flow of Illicit Drugs Across our Northern Border, 90 Fed. Reg. 11743 (Mar. 11, 2025).

<sup>11</sup> Filing, Transmittal Letter at 7, 15.

<sup>12</sup> *Id.* (referencing NYISO, NYISO Agreements, Foundation Agreement (ISO Agreement) (5.0.0), § 19.01 (ISO Agreement)).

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.* (citing U.S. Int'l Trade Comm'n, Harmonized Tariff Schedule of the United States, ch. 27 (Harmonized Tariff Schedule)).

Customs and Border Protection (Customs and Border Protection), which administers the rest of the Harmonized Tariff Schedule).<sup>15</sup> In addition, NYISO asserts that legal precedent has limited tariff application to “tangible” products rather than intangible items like electricity,<sup>16</sup> and states that the United States International Trade Commission recently explained that “imports of electrical energy are not considered to be subject to the tariff laws of the United States.”<sup>17</sup>

7. NYISO also identifies various other uncertainties if Canadian electrical energy were held to be subject to the Canadian Tariff Executive Order, including: (1) whether a 25% or 10% import duty rate would apply; (2) how Canadian electrical energy imports would be measured or valued, and how import duties would be assessed and collected, given the apparent inapplicability of traditional procedures for taxing tangible goods—which may require development of electricity-specific rules to resolve; and (3) whether NYISO would be deemed the “importer of record” responsible for paying import duties.<sup>18</sup> NYISO states that no precedent or instruction from the federal government has yet clarified any of these issues. NYISO adds that it is actively seeking guidance from relevant federal authorities and coordinating with other Regional Transmission Organizations that face the same questions.

## **B. FPA Section 206 Burden**

8. NYISO argues under FPA section 206 that the Canadian Tariff Executive Order has made its tariffs unjust and unreasonable to the extent that they do not expressly and clearly establish NYISO’s ability to collect and remit potential import duties on Canadian electrical energy.<sup>19</sup>

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<sup>15</sup> *Id.* (citing Harmonized Tariff Schedule, ch. 27 at 27-2 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.”)).

<sup>16</sup> *Id.* (citing *ClearCorrect Operating v. Int’l Trade Comm’n*, 810 F. 3d 1283, 1298 (Fed. Cir. 2015)).

<sup>17</sup> *Id.* at 6 (citing U.S. Int’l Trade Comm’n, *Renewable Elec.: Potential Econ. Effects of Increased Commitments in Mass.*, at 36 (Jan. 2021), <https://www.usitc.gov/publications/332/pub5154.pdf>).

<sup>18</sup> *Id.* (citing 19 U.S.C. § 1484(a)(2)(B)).

<sup>19</sup> *Id.* at 6-8, 15.

9. NYISO states that it believes it should not have any role in implementing the Canadian Tariff Executive Order and should not be responsible for paying import duties to Customs and Border Protection or any other federal authority.<sup>20</sup> Nevertheless, given the possibility that NYISO's position does not prevail, NYISO asserts that it must have tariff mechanisms in place clearly empowering it to collect and remit import duties. Absent that authority, NYISO states that it could be exposed to tens of millions of dollars in charges that it would have no ability to pay, resulting in adverse consequences including possible bankruptcy and financial restrictions on its ability to import Canadian electrical energy needed for reliability. NYISO asserts that the absence of clear tariff provisions to address these issues renders the tariffs unjust and unreasonable; conversely, NYISO states that adding transparent provisions to the tariffs would provide NYISO and its stakeholders needed certainty regarding their respective obligations and roles in the event that import duties are imposed on NYISO.

10. NYISO argues that its concerns are not merely speculative or otherwise insufficient to support a showing of unjustness and unreasonableness.<sup>21</sup> NYISO argues that it is reasonably foreseeable that NYISO could be required to make import duty payments to a federal revenue authority given the fact that the Canadian Tariff Executive Order nearly went into effect in early February and was scheduled at the time of filing to go into effect on March 4, 2025. NYISO adds that it is also reasonably foreseeable that NYISO could suffer severe financial consequences if it lacks a tariff mechanism to collect and allocate import duty costs given the volume and value of electrical energy that it imports from Canada. NYISO acknowledges that it may have implied authority to collect and allocate the costs of import duties on Canadian electrical energy under its currently effective OATT, but NYISO argues that the existence of these provisions does not diminish the urgency of the need for express tariff provisions to avoid ambiguity and potential exposure to unrecoverable costs.<sup>22</sup> Further, NYISO argues that the cost allocation under Rate Schedule 1 of its OATT, which allocates costs on a 72% Withdrawal Billing Units and 28% Injection Billing Units basis, would be inferior to the

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<sup>20</sup> *Id.* at 7.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 7 n.24 (citing NYISO, NYISO Tariffs, NYISO OATT, 6.1-6.1.8 OATT Schedule 1 - ISO Annual Budget Charge (21.0.0), § 6.1.2.1 (authorizing 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.”)).

replacement rates that NYISO proposes here for the recovery of import duty costs.<sup>23</sup> For those reasons, NYISO asserts that it cannot reasonably wait until after import duties go into effect to propose a cost recovery mechanism.

**C. Proposed Replacement Rate or Tariff Revisions**

11. NYISO proposes a set of tariff revisions to serve as either a replacement rate under FPA section 206 or a tariff revision under FPA section 205. These revisions would establish a new Schedule 22 to NYISO's OATT and Schedule 9 to NYISO's Services Tariff, and make other corresponding revisions, to "authorize [NYISO] to collect any rate of duty (or other [*sic*] any other form of duty or charge) that may be assessed on imports of electrical energy from Canada if [NYISO] determines in good faith that it is lawfully obliged to remit such duties or charges to the appropriate federal revenue authority . . . ." <sup>24</sup>

12. NYISO explains that the proposed tariff revisions would not require NYISO to begin paying import duties or collecting and allocating them unless NYISO determines in good faith that it is legally obligated to pay import duties.<sup>25</sup> NYISO states that this approach will allow NYISO to await further guidance from the federal government concerning NYISO's obligations, if any, under the Canadian Tariff Executive Order. NYISO further states that, if it learns that it need not collect and remit import duties, there will never be a need to use the tariff revisions proposed herein.

13. NYISO explains that its preferred cost allocation method expressly authorizes NYISO to assign "the full amount of any duty or related charge" to the individual "Subject Transaction Financially Responsible Party" that is paid for imports of electrical energy from Canada through NYISO's market (i.e., the Canadian supplier) (Preferred Cost Allocation Method).<sup>26</sup> NYISO asserts that this approach is consistent with the

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<sup>23</sup> *Id.* (citing NYISO, NYISO Tariffs, NYISO OATT, 6.1-6.1.8 OATT Schedule 1 - ISO Annual Budget Charge (21.0.0), § 6.1.2.2).

<sup>24</sup> NYISO, NYISO Tariffs, NYISO OATT, 6.22 OATT Schedule 22 (0.0.0) (Proposed OATT Schedule 22), § 6.22.1; Filing, Transmittal Letter at 12.

<sup>25</sup> Filing, Transmittal Letter at 10.

<sup>26</sup> *Id.* at 8; Proposed OATT Schedule 22, § 6.22.2. NYISO also states that the initial process for calculating, paying, and collecting import duties under the Preferred Cost Allocation Method would initially be administered manually, with settlements occurring on a monthly basis, but that it may consider developing software revisions to automate implementation if it is found to be required to collect and remit import duties for an extended period. Filing, Transmittal Letter at 8.

Commission's cost causation principles because it assigns costs to the entities that cause imports to occur.<sup>27</sup> NYISO asserts that this approach would incentivize Subject Transaction Financially Responsible Parties to reflect import duty costs in their offers, thereby resulting in prices and schedules that align the marginal cost of supplying electric energy with the willingness to pay for electric energy. NYISO states that this approach would accordingly be consistent with the Commission's cost causation principles, NYISO's existing market design, and market efficiency—and argues that the Commission should, for those reasons, find it to be just and reasonable.

14. For the Preferred Cost Allocation Method, NYISO proposes that the amount of the payment shall be the product of: (1) the Subject Transaction megawatt-hour (MWh); (2) the applicable Day-Ahead Locational Based Marginal Pricing (LBMP)<sup>28</sup> at the relevant Duty Eligible Proxy Generator Bus; and (3) the rate of import duty specified by federal law as interpreted by the relevant federal revenue authority.<sup>29</sup> NYISO states that it proposes defining Subject Transactions as “[a]n Import or Wheel Through at a Duty Eligible Proxy Generator Bus . . . and include[s] real-time scheduled Imports of Energy, Import Bilateral Transactions for Energy, and Wheels Through that inject Energy at a Duty Eligible Proxy Generator Bus . . . .”<sup>30</sup>

15. NYISO further states that it proposes to calculate the price of Canadian electricity subject to import duties using Day-Ahead LBMPs.<sup>31</sup> NYISO explains that each Day-Ahead LBMP represents a financially binding price for electricity sales at a relevant time and location and is a more “liquid” price than a Real-Time LBMP. NYISO explains that, because the Real-Time Market acts as an energy imbalance market, Real-Time LBMPs lack a similarly intentional valuation of the electrical energy. While NYISO acknowledges that there may be some discrepancy between day-ahead price and real-time price, it argues that any inconsistency is greatly outweighed by the multiple advantages of using Day-Ahead LBMPs. NYISO asserts that it is necessary to select a single applicable

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<sup>27</sup> *Id.* (citing *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)).

<sup>28</sup> LBMP is defined as “the price of Energy at each location in the [New York State] Transmission System as calculated pursuant to [OATT] Attachment J.” NYISO, NYISO OATT, 1.12 OATT Definitions - L (5.0.0).

<sup>29</sup> Filing, Transmittal Letter at 8.

<sup>30</sup> *Id.* at 11; NYISO, NYISO OATT, 1.19 OATT Definitions - S (20.0.0).

<sup>31</sup> Filing, Transmittal Letter at 10.

quantity and price value because import duties are inherently uni-directional. NYISO contends that choosing Day-Ahead LBMPs instead of Real-Time LBMPs will allow parties to account for both Day-Ahead and Real-Time transaction costs in their offers. Finally, NYISO alleges that Day-Ahead LBMPs are a reasonable proxy for real-time prices in this context because day-ahead and real-time prices generally converge in NYISO-administered markets and are thus often similar to each other.

16. As an alternative, if the Commission does not accept the Preferred Cost Allocation Method, NYISO proposes assigning import duty-related costs to Transmission Customers on a pro rata withdrawal basis (Alternative Cost Allocation Method).<sup>32</sup> NYISO explains that it proposes a pro rata allocation on a withdrawal basis because there is no practical way for NYISO to determine, due to the nature of electrical energy, which individual customers are receiving more or less Canadian electrical energy. NYISO states that this approach would not assign import duty costs directly to the entities that cause them and would not be as integrated with existing market mechanisms as NYISO's Preferred Cost Allocation Method. Nevertheless, NYISO asserts that the Alternative Cost Allocation Method would allow it to collect and allocate costs from entities that benefit from the availability of electrical energy from Canada. NYISO notes that its OATT includes pro rata cost allocation methods for other purposes, which the Commission has found to be just and reasonable.<sup>33</sup> For that reason, NYISO argues that the Alternative Cost Allocation Method is just and reasonable and satisfies the principle that cost allocation must be at least "roughly commensurate" with benefits.<sup>34</sup>

17. NYISO proposes to create an exception to the Preferred Cost Allocation Method if NYISO imports electrical energy from Canada in an emergency under the OATT or inter-regional coordination agreement provision applicable to that emergency (i.e.,

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<sup>32</sup> *Id.* at 8-9; Proposed OATT Schedule 22, § 6.22.4. NYISO states that, if its second-choice replacement rate is implemented, it may need to develop additional changes to address any possible impacts on market efficiency and cost allocation after it gains experience administering the proposed rules. Filing, Transmittal Letter at 9.

<sup>33</sup> *Id.* at 8 (citing NYISO, NYISO OATT, 31.5 OATT Attach. Y Cost Allocation and Cost Recovery (31.0.0), §§ 31.5.3.2.4, 31.5.5.4.3; *see also N.Y. Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,044, at P 331 (2014) (accepting NYISO's default load ratio share cost 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).")).

<sup>34</sup> Filing, Transmittal Letter at 9 (citing *Sw. Power Pool, Inc.*, 187 FERC ¶ 61,123, at P 53, *order on reh'g*, 189 FERC ¶ 61,128 (2024); *Ill. Com. Comm'n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009)).



executes Emergency Energy Transactions).<sup>35</sup> NYISO explains that, for Emergency Energy Transactions, NYISO would be the de facto Subject Transaction Financially Responsible Party and therefore would be unable to assign the import duty-related costs of such Transactions to any other party. NYISO instead proposes to collect and allocate the costs of any import duties applied to Emergency Energy Transactions under the established mechanisms already in its tariffs and coordination agreements for collecting and allocating the cost of Emergency Energy.<sup>36</sup>

18. NYISO proposes to amend section 26.4.2.1 of the Services Tariff to expressly establish that it has the authority to adjust its credit requirements applicable to Transmission Customers with load-serving obligations to the extent necessary to account for the imposition of import duties on electric energy.<sup>37</sup> NYISO explains that a Customer must allocate unsecured credit and/or provide collateral equal to or greater than its Operating Requirement, which is a measure of a Customer's expected financial obligations to NYISO based on the Customer's participation in NYISO-administered markets.<sup>38</sup> NYISO explains that it calculates the Operating Requirement by summing the values of various components, each of which is determined using a tariff-prescribed formula, including the Energy and Ancillary Services Component. NYISO proposes to modify the Energy and Ancillary Services Component calculation to establish NYISO's authority to adjust the component to the extent that NYISO deems necessary to account for the imposition of import duties on electrical energy.

19. NYISO proposes sections 5 and 6 of Schedule 22 for the possibility that import duties may be applied to NYISO products other than electrical energy (e.g., capacity).<sup>39</sup> NYISO states that it does not anticipate that this will occur because capacity "arguably falls outside the scope of 'electrical energy' under the [Harmonized Tariff Schedule] and is seemingly even more intangible in nature than electricity[,]" but that NYISO needs to ensure that it has the ability to recover import duty costs that might be applied to such products.<sup>40</sup> Section 5 of Schedule 22 provides that NYISO may address potential import duties on non-Energy NYISO products through either the ISO Procedures (i.e., unfilled

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<sup>35</sup> *Id.* at 12.

<sup>36</sup> Proposed OATT Schedule 22, § 6.22.3.

<sup>37</sup> Filing, Transmittal Letter at 8, 14.

<sup>38</sup> *Id.* at 14. *See* NYISO, NYISO Tariffs, Services Tariff, 26.4 MST Att K Operating Requirement and Bidding Requirement (31.0.0).

<sup>39</sup> Filing, Transmittal Letter at 13-14.

<sup>40</sup> *Id.* at 13.

manuals and other non-tariff documents that set forth implementation details) or future tariff enhancements that might be implemented as of the effective date of this filing. NYISO states that, to maximize the Commission's ability to set an effective date for such a filing back to the date of this filing, 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."<sup>41</sup> NYISO states that 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."<sup>42</sup> NYISO acknowledges that this provision would only be relevant if the Commission were to accept Schedule 22 under FPA section 205 instead of FPA section 206, and explains that it is seeking this unusual degree of flexibility given the great uncertainty concerning the potential scope, timing, and impacts of import duties on Canadian electrical energy.

20. NYISO states that the NYISO Board of Directors authorized NYISO to proceed under either FPA section 206 or NYISO's FPA section 205 exigent circumstances authority "to amend the NYISO tariffs to establish appropriate authority to collect and remit such [import] duties as may be determined to be the legal responsibility of the NYISO . . . ."<sup>43</sup> NYISO states that it is not required to secure stakeholder authorization to make either type of filing, but that it nevertheless engaged with stakeholders before making the submission, which reflects stakeholder feedback.

21. NYISO states that, if the Commission acts under FPA section 205, NYISO consents to the Commission imposing conditions on its acceptance of its proposed tariff revisions to the greatest extent lawfully permitted under *NRG Power Marketing, LLC v. FERC*.<sup>44</sup> Further, while NYISO states that it does not believe that the limits on the Commission's authority to modify tariff filings under *NRG* apply to revisions proposed under FPA section 206—which NYISO states is a principal reason why it is filing under

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<sup>41</sup> *Id.*; Proposed OATT Schedule 22, § 6.22.6.

<sup>42</sup> Filing, Transmittal Letter at 14 (citing *Consol. 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); *Cogentrix Energy Power Mgmt., LLC v. FERC*, 24 F.4th 677, 685 (D.C. Cir. 2022)).

<sup>43</sup> *Id.* at 16-17.

<sup>44</sup> *Id.* at 15 (citing *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017) (*NRG*)).

FPA section 206, and only filing under FPA section 205 in the alternative—NYISO emphasizes that it consents to the Commission imposing conditions on its acceptance or approval of its proposed replacement rate to the extent necessary.

22. NYISO requests that, if acting under FPA section 206, the Commission make a replacement rate effective as of February 28, 2025, the date of filing.<sup>45</sup> If the Commission acts under FPA section 205, NYISO requests a March 1, 2025 effective date, and submits that there is good cause to permit an effective date of the day after filing given NYISO's need for its OATT and Service Tariff revisions to become effective before import duties on Canadian electrical energy are imposed.

23. NYISO requests waiver of any part of the Commission's regulations necessary to process this filing, including Rule 206 of the Commission's Rules of Practice and Procedure,<sup>46</sup> if under FPA section 206, and cost-of-service filing requirements under Part 35 of the Commission's regulations,<sup>47</sup> if under FPA section 205.<sup>48</sup> NYISO asserts that Rule 206 is generally inapplicable here because its requirements apply to the context of adversarial FPA section 206 complaints, and the cost-of-service filing requirements under Part 35 of the Commission's regulations are also inapplicable to a filing of this kind.

### **III. Notice of Filing and Responsive Pleadings**

24. Notice of NYISO's filing in Docket No. ER25-1462-000 was published in the *Federal Register*, 90 Fed. Reg. 11536 (Mar. 7, 2025), with interventions and protests due on or before March 10, 2025. On March 19, 2025, the Commission issued an errata correcting omission of Docket No. EL25-62-000 from the Commission's notice of NYISO's filing in Docket No. ER25-1462-000.

25. On March 10, 2025, New York Transmission Owners (NYTO)<sup>49</sup> filed a motion for limited extension of comment deadline until March 13, 2025. Also on March 10, 2025, the Commission issued a notice shortening the answer period to New York Transmission

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<sup>45</sup> *Id.* at 10-11.

<sup>46</sup> 18 C.F.R. § 385.206 (2024).

<sup>47</sup> *Id.* pt. 35.

<sup>48</sup> Filing, Transmittal Letter at 14-15.

<sup>49</sup> NYTOs include: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York Inc.; Orange and Rockland Utilities, Inc.; New York Power Authority; Niagara Mohawk; New York Electric & Gas Corporation; Rochester Gas and Electric Corporation; and Long Island Power Authority.

Owners' motion. On March 12, 2025, the Commission issued a notice extending the deadline to file comments, protests, and interventions until March 13, 2025.<sup>50</sup>

26. New York State Public Service Commission filed a notice of intervention. Timely motions to intervene were filed by: American Clean Power Association; Boston Energy Trading and Marketing LLC; Calpine Corporation; Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.; Electric Power Supply Association; H.Q. Energy Services (U.S.) Inc.; New York Association of Public Power; NYTOs; NYISO's Independent Market Monitoring Unit (IMM); Public Citizen, Inc. (Public Citizen); Ravenswood Operations, LLC; Sempra Gas & Power Marketing, LLC; Shell Energy North America (US), L.P.; Solar Energy Industries Association; and Vitol Inc.

27. Independent Power Producers of New York, Inc. (IPPNY), New York Transmission Owners, and IMM filed comments. On March 10, 2025, Public Citizen filed a protest. On March 14, 2025, Public Citizen filed additional comments out-of-time.

#### **A. Comments**

28. IPPNY and NYTOs argue that NYISO demonstrates that its current tariffs have become unjust and unreasonable because they lack a clear mechanism to collect and allocate potential Canadian import duty costs.<sup>51</sup> IPPNY and NYTOs argue that NYISO, which operates as a pass-through entity, could suffer significant adverse consequences if it cannot collect and properly allocate the cost of import duties on Canadian electricity.

29. IMM, IPPNY, and NYTOs support the Preferred Cost Allocation Method and agree with NYISO that it is just and reasonable because it is consistent with the cost causation principle, NYISO's existing market design, and market efficiency.<sup>52</sup> IMM, IPPNY, and NYTOs argue that the Preferred Cost Allocation Method is consistent with the cost causation principle because the entities responsible for scheduling Canadian electricity imports would bear the associated costs.<sup>53</sup> IMM also states that the Preferred Cost Allocation Method is consistent with the beneficiary pays principle, arguing that it will tend to allocate any indirect import duty cost to the beneficiaries of Canadian imports

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<sup>50</sup> *N.Y. Indep. Sys. Operator, Inc.*, Notice of Extension of Time, Docket Nos. ER25-1462-000 and EL25-62-000 (issued Mar. 12, 2025).

<sup>51</sup> IPPNY Comments at 3; NYTOs Comments at 3, 8.

<sup>52</sup> IMM Comments at 2; IPPNY Comments at 3-4; NYTOs Comments at 3.

<sup>53</sup> IMM Comments at 3; IPPNY Comments at 3; NYTOs Comments at 4.

because NYISO's market design assigns costs to consumers based on the marginal cost of serving demand at each location, regardless of transmission congestion.<sup>54</sup>

30. IMM, IPPNY, and NYTOs further argue that the Preferred Cost Allocation Method will provide importers an incentive to increase their import offer price by the amount of the expected import duty, which will result in prices and schedules that accurately reflect the marginal cost and therefore minimize market distortions.<sup>55</sup> IMM explains that this is because NYISO's day-ahead and real-time markets accept the lowest cost offers and set a clearing price at each location equal to the marginal cost of supplying the location considering transmission losses and congestion from moving power across the grid.<sup>56</sup>

31. In addition, IMM supports NYISO's proposed use of day-ahead LBMPs because they allow importers offering into the day-ahead market to account for the cost of the import duty, and are therefore more predictable for importers than an import duty based on real-time prices, leading to more efficient scheduling.<sup>57</sup> IMM states that basing the import duty on the real-time LBMP would create significant uncertainty, which would result in inefficient scheduling to the extent that imports would sometimes be scheduled at a loss or not scheduled when they would have been profitable.

32. NYTOs, however, request that the Commission authorize NYISO to add language to sections 2 and 3 of Schedule 22 to allow NYISO to calculate import duties or charges according to federal regulation or guidance governing the calculation of potential import duties on Canadian electricity, if it differs from that provided for in the Preferred Cost Allocation Method.<sup>58</sup> NYTOs state that this addition is needed to ensure that NYISO is

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<sup>54</sup> IMM Comments at 4.

<sup>55</sup> *Id.* at 3; IPPNY Comments at 4; NYTOs Comments at 4. As an example, IMM explains that, under the Preferred Cost Allocation Method, if the import duty rate is 25%, an importer with a cost of supply of \$30 per MWh would have an incentive to mark up its offer by 33.3% to ensure that the LBMP would be at least \$40 per MWh and thereby that the importer would receive a sufficient margin to earn a profit after the import duty is collected. IMM Comments at 3.

<sup>56</sup> *Id.* at 3.

<sup>57</sup> *Id.* at 5.

<sup>58</sup> NYTOs Comments at 5-7. Specifically, NYTOs propose that the Commission subject its acceptance of NYISO's filing to submission of a compliance filing incorporating the following sentence into Proposed OATT Schedule 22, sections 6.22.2 and 6.22.3: "However, if the federal entity with requisite authority issues regulations or guidance governing the calculation of duties or other charges on electrical energy from

able to collect and allocate costs in accordance with federal requirements. NYTOs state that NYISO authorized NYTOs to represent that NYISO does not oppose adding this language. NYTOs also request that the Commission condition acceptance of NYISO's filing upon NYISO's prompt filing of: (1) an explanation of its actions and/or new tariff sheets if it implements an import duty collection or allocation mechanism; and (2) if federal guidance provides NYISO discretion about how to implement import duties, confirmation of its interpretation of such guidance and whether further tariff revisions are needed to implement recovery under it.

33. NYTOs argue that the Alternative Cost Allocation Method's withdrawal ratio basis allocation of costs would lead to inefficient dispatch decisions and undermine competitive market principles by spreading costs across all load-serving entities.<sup>59</sup> NYTOs request that, if the Commission does not accept the Preferred Cost Allocation Method, the Commission "provide an opportunity for stakeholders to provide additional comments, and supporting information addressing whether the use of a withdrawal ratio share basis is both consistent with the federal imposition of import duties on the importer of record and meets basic principles of cost causation and beneficiaries pay."<sup>60</sup>

34. Lastly, IPPNY and NYTOs support NYISO's proposed credit requirement revisions, asserting that the proposed tariff revisions are necessary to protect market participants from potential financial instability, ensure that financial risks are appropriately accounted for, and do not result in market-wide liquidity constraints.<sup>61</sup>

## **B. Protest**

35. Public Citizen opposes NYISO's filing. Public Citizen argues that NYISO cannot collect import duties absent clear and enforceable implementation guidance from Customs and Border Protection and because NYISO, as a market administrator, is not the importer of record of Canadian electricity.<sup>62</sup> Public Citizen explains that it is Customs and Border Protection who will administer and collect import duties from the market-based rate sellers that import Canadian electricity into the United States—not NYISO.

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Canada that differs from the formula in the preceding sentence, then the ISO shall calculate payment amounts in accordance with such regulations or guidance." *Id.* at 6.

<sup>59</sup> *Id.* at 4-5.

<sup>60</sup> *Id.* at 7.

<sup>61</sup> *Id.* at 7-8; IPPNY Comments at 4-5.

<sup>62</sup> Public Citizen Protest at 1, 2, 6. Public Citizen asserts that NYISO's proposal "misclassify[ies] NYISO . . . as [a] tariff collection agent[.] . . ." *Id.* at 1.

36. Public Citizen states that no specific identified Harmonized Tariff Schedule provision currently provides for import duties on Canadian energy or energy resources and that Customs and Border Protection has not yet provided clear and enforceable guidance establishing a legally operable tariff classification or collection for Canadian hydroelectric imports.<sup>63</sup> Public Citizen explains that, by law, an importable good must be explicitly classified under the Harmonized Tariff Schedule based on its physical characteristics and commercial identity, fit squarely within an industry recognized definition that distinguishes it from other goods to avoid arbitrary or inconsistent application, and have a legally operable method for import duty assessment and collection that ensures uniform enforcement by Customs and Border Protection. Public Citizen notes that Harmonized Tariff Schedule 2716.00.00 has classified electricity as import duty-free, and Customs and Border Protection has never amended this designation to include import duties on hydroelectric power. Public Citizen argues that absent uniform and legally operable enforcement guidelines, the Customs and Border Protection's directive remains incomplete and requires further clarification before any Commission-jurisdictional entity can move forward with efforts to collect import tariffs.

37. In its March 14 supplemental comments, Public Citizen argues that a determination from U.S. Secretary of State Marco Rubio that "all efforts, conducted by an agency of the federal government, to control . . . the transfer of goods . . . and other items across the borders of the United States constitutes a foreign affairs function of the United States under the Administrative Procedure Act" appears to usurp the Commission's FPA authority to regulate electricity imports, places the U.S. Department of State in control of electricity import matters, and therefore limits the ability of the Commission to accept the tariffs as proposed by NYISO.<sup>64</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

38. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2024), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

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<sup>63</sup> *Id.* at 2-3, 6.

<sup>64</sup> Public Citizen March 14 Comments at 1 (citing Determination: Foreign Affairs Functions of the United States, 90 Fed. Reg. 12200, at 3 (Feb. 21, 2025) (Secretary of State Determination) (citing 5 U.S.C. §§ 553, 554)).

## **B. Substantive Matters**

39. We find that NYISO's proposed OATT and Services Tariff revisions under FPA section 205 are just and reasonable and not unduly discriminatory or preferential and therefore accept them, to be effective March 1, 2025, as requested,<sup>65</sup> subject to condition, as discussed below.<sup>66</sup> We also dismiss as moot NYISO's complaint under FPA section 206 alleging that its tariffs are unjust and unreasonable for lack of express provisions governing the collection and allocation of potential import duty-related costs, given our acceptance of its proposal under FPA section 205.

40. As discussed below, we find that NYISO's proposal is just and reasonable and not unduly discriminatory or preferential because it provides NYISO clear authority to collect and allocate any import duty costs imposed by relevant federal authorities that it may be required to pay. That is all the statute requires of this Commission and we do no more. In accepting NYISO's proposal, we make no finding regarding whether import duties imposed pursuant to the Canadian Tariff Executive Order apply to Canadian electricity or whether NYISO is required to pay them. Rather than placing NYISO in the role of "tariff collection agent,"<sup>67</sup> as argued by Public Citizen, our acceptance of NYISO's proposal merely "authorize[s NYISO] to collect any rate of duty (or . . . 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 import duties or charges to the appropriate federal revenue authority . . . ."<sup>68</sup> As noted above, NYISO explains that this approach will allow NYISO to await further guidance from the federal government concerning its potential obligations.<sup>69</sup> However, given the exigent

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<sup>65</sup> We grant NYISO's request for a waiver of the Commission's 60-day prior notice requirement to allow an effective date of March 1, 2025. 18 C.F.R. § 35.11 (2024). We also grant NYISO's request for waiver of the Commission's cost-of-service filing requirements under Part 35 of the Commission's regulations given their inapplicability to this filing. Filing, Transmittal Letter at 15.

<sup>66</sup> See *NRG*, 862 F.3d at 114-15 (discussing the Commission's authority to propose modifications to a utility's FPA section 205 rate proposal). As noted above, NYISO states that it submits this filing pursuant to FPA section 205 under its exigent circumstances authority in section 19.01 of its ISO Agreement. We note that section 19.01 of the ISO Agreement provides that proposed revisions submitted pursuant to the exigent circumstances authority must include an expiration date of 120 days after NYISO files with the Commission, unless the Management Committee files a written concurrence endorsing the proposed revisions before then.

<sup>67</sup> Public Citizen Protest at 1.

<sup>68</sup> Proposed OATT Schedule 22, § 6.22.1.



circumstances present here, additional transparency is warranted. We direct NYISO to (1) submit an informational filing that includes legal and/or technical guidance and related documentation from the relevant federal authorities establishing NYISO's good faith belief that it is lawfully obliged to remit import duties on Canadian electricity, as soon as practicable after receiving such guidance and, (2) if it begins paying import duties on Canadian electricity imports, to submit informational filings every six months for three years from the date that payments begin quantifying the costs of the import duties in NYISO.<sup>70</sup>

41. We find that NYISO's proposed Preferred Cost Allocation Method in sections 1 and 2 of Rate Schedule 22 is just and reasonable and not unduly discriminatory or preferential because it provides for NYISO to collect and allocate the cost of any import duty that it is required to pay to the entities that cause NYISO to incur them. As NYISO explains, and IMM, IPPNY, and NYTOs confirm, this allocation mechanism will incentivize Canadian electricity sellers to reflect import duty costs in their offer schedules, thereby aligning the marginal cost of supplying electric energy with the willingness to pay for electric energy.<sup>71</sup> Thus, we find that the Preferred Cost Allocation Method is consistent with market efficiency and NYISO's existing market design.

42. We find that NYISO's proposed section 3 of Rate Schedule 22, to create an exemption from the Preferred Cost Allocation Method for imports of electrical energy from Canada in an emergency, is just and reasonable and not unduly discriminatory or preferential. Specifically, we agree with NYISO that it is appropriate to assign import duty-related costs under the existing cost allocation method in the OATT (or inter-regional coordination agreement provision applicable to that emergency), rather than to assign import duty-related costs to NYISO as the Subject Transaction Financially Responsible Party.

43. NYTOs assert that NYISO should revise sections 2 and 3 of Rate Schedule 22 to include a sentence to provide that NYISO shall calculate payment amounts on import duties according to federal regulation or guidance governing the calculation of potential import duties on Canadian electricity if it differs from the formula proposed in those sections.<sup>72</sup> NYTOs state that NYISO does not oppose that request. We agree with NYTOs that the addition of this provision will ensure that NYISO is able to collect and

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<sup>69</sup> Filing, Transmittal Letter at 10.

<sup>70</sup> Each informational filing should be submitted in the same docket number and will not be noticed for comment or subject to Commission action.

<sup>71</sup> IMM Comments at 3; IPPNY Comments at 4; NYTOs Comments at 4.

<sup>72</sup> NYTOs Comments at 6.

remit import duties in accordance with calculation guidance that may be provided by a relevant federal authority. Accordingly, consistent with NYTOs' representation that NYISO does not oppose the revision, we direct NYISO to submit a compliance filing with revised tariff records incorporating the NYTOs' proposed revisions in sections 2 and 3 of Rate Schedule 22 within 30 days of the date of this order.<sup>73</sup>

44. Additionally, because we accept NYISO's Preferred Cost Allocation Method, we direct NYISO to remove the alternate proposed provisions establishing the Alternative Cost Allocation Method from Rate Schedule 22<sup>74</sup> in the compliance filing directed above, to be submitted within 30 days of the date of this order.

45. We find that NYISO's proposed credit requirement revisions in section 26.4.2.1 of the Services Tariff are just and reasonable and not unduly discriminatory or preferential because they appropriately establish authority for NYISO to adjust credit requirements to account for any additional financial risk in connection to the imposition of import duties that NYISO is required to pay. We agree with IPPNY and NYTOs that NYISO's proposed credit requirement revisions are necessary to protect market participants from potential financial instability and to appropriately account for financial risks.<sup>75</sup>

46. In accepting NYISO's proposed sections 5 and 6 of Rate Schedule 22, we do not prejudice any future revisions to address potential import duties on non-Energy NYISO products. We note that such revisions must be consistent with the filed rate doctrine.<sup>76</sup>

47. We are unpersuaded by Public Citizen's argument that NYISO's proposal is unjust and unreasonable because, Public Citizen argues, collection of import duties is legally indefensible absent clear classification and enforcement guidance by Customs and Border Protection.<sup>77</sup> NYISO did not argue in its filing that the imposition of import duties on

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<sup>73</sup> Nothing in this order alters the requirement under the FPA that all rates and charges made, demanded, or received by a public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges must be just and reasonable. 16 U.S.C. §§ 824d(a), 824e(a).

<sup>74</sup> Proposed OATT Schedule 22, § 6.22.4.

<sup>75</sup> IPPNY Comments at 4; NYTOs Comments at 7-8.

<sup>76</sup> Notably, section 6 of Rate Schedule 22 provides that the provisions of Schedule 22 are "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." Proposed OATT Schedule 22, § 6.22.6.

Canadian electrical energy is legally permissible or impermissible, nor did NYISO ask the Commission to rule on the question. And we affirmatively do not do so here. We find only that it is just and reasonable for NYISO, given the real concerns NYISO has expressed should it wait to request the authority until after any such requirement is imposed, to have the ability to collect and allocate the costs of any import duties on Canadian electricity that it may be required to pay by the relevant federal authorities.<sup>78</sup> This matter is squarely within the Commission's FPA section 205 authority to ensure that all public utility rates for sale of electric energy subject to the jurisdiction of the Commission shall be just and reasonable.<sup>79</sup>

48. Lastly, we dismiss as moot NYISO's complaint under FPA section 206. NYISO argues under FPA section 206 that the Canadian Tariff Executive Order has made its tariffs unjust and unreasonable to the extent that they do not expressly and clearly establish NYISO's ability to collect and remit potential import duties on Canadian electrical energy.<sup>80</sup> Because we accept NYISO's proposed tariff revisions under FPA section 205, NYISO's tariffs no longer lack express and clear authority to collect and remit potential import duties on Canadian electrical energy. Therefore, we find that NYISO's complaint is moot.

The Commission orders:

(A) NYISO's OATT and Services Tariff revisions are hereby accepted, subject to condition, effective March 1, 2025, as requested, as discussed in the body of this order.

(B) NYISO is hereby directed to submit informational filing(s), as discussed in the body of this order.

(C) NYISO is hereby directed to submit a compliance filing within 30 days of

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<sup>77</sup> Public Citizen Protest at 2.

<sup>78</sup> We disagree with Public Citizen that the Secretary of State Determination limits our ability to accept NYISO's proposed tariff revisions. The Secretary of State Determination's finding that the efforts described therein "constitute a foreign affairs function of the United States under the Administrative Procedure Act" does not affect the Commission's obligation under the FPA to evaluate the justness and reasonableness of NYISO's tariff revisions proposed here.

<sup>79</sup> 16 U.S.C. § 824d.

<sup>80</sup> Filing, Transmittal Letter at 6-8, 15.

the date of this order, as discussed in the body of this order.

(D) NYISO's complaint is hereby dismissed as moot, as discussed in the body of this order.

By the Commission.

( S E A L )

Debbie-Anne A. Reese,  
Secretary.

Appendix

New York Independent System Operator, Inc.  
NYISO Tariffs  
*Accepted Effective March 1, 2025*

[NYISO OATT, 1.4 OATT Definitions - D \(16.0.0\)](#)

[NYISO OATT, 1.19 OATT Definitions - S \(20.0.0\)](#)

[NYISO OATT, 6.22 OATT Schedule 22 \(0.0.0\)](#)

[NYISO MST, 2.4 MST Definitions - D \(18.0.0\)](#)

[NYISO MST, 2.19 MST Definitions - S \(34.0.0\)](#)

[NYISO MST, 15.9 MST Rate Schedule 9 \(0.0.0\)](#)

[NYISO MST, 26.4 MST Att K Operating Requirement and Bidding Requirement \(32.0.0\)](#)