

191 FERC ¶ 61,029  
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.

ISO New England Inc.

Docket No. ER25-1445-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued April 14, 2025)

1. On February 28, 2025, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and the Exigent Circumstances provisions of section 11.2 of the New England Power Pool (NEPOOL) Participants Agreement (Participants Agreement),<sup>2</sup> ISO New England Inc. (ISO-NE) filed proposed revisions to its Transmission, Markets and Services Tariff (Tariff)<sup>3</sup> to permit ISO-NE to collect and allocate any duties, tariffs, or taxes (Import Duty) that a federal governmental agency directs ISO-NE to pay for Canadian imports of products or services sold under the Tariff into markets administered by ISO-NE (Import Duty Cost Recovery Change). For the reasons discussed below, we accept ISO-NE's proposed revisions, to become effective March 1, 2025, as requested, and, as discussed in the body of this order, direct ISO-NE to (1) submit an informational filing that includes any legal and/or technical guidance and related documentation from the relevant federal authorities showing that a federal agency has assessed an Import Duty on Canadian electricity imports on ISO-NE, triggering ISO-NE's collection authority, as soon as practicable after receiving such assessment and, (2) if ISO-NE begins paying Import

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<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> ISO New England Inc. Agreements and Contracts, Participants Agreement, § 11 (Changes) (1.0.0), § 11.2 (Exigent Circumstances).

<sup>3</sup> ISO New England Inc., Transmission, Mkts. & Servs. Tariff, § I (Table of Contents) (1.0.0); ISO New England Inc., Transmission, Mkts. and Servs. Tariff, § I.5 (Force Majeure, Liability and Indemnification; Collection of Import Duties, Tariffs or Taxes) (3.0.0).

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 ISO-NE.<sup>4</sup>

## I. Background

2. ISO-NE states that New England is a major importer of electricity<sup>5</sup> from Canada. ISO-NE states that Canadian imports have served approximately 11% of New England's load, on average, over the past five years.<sup>6</sup> ISO-NE states that New England's single largest source of electricity is the Phase II Interconnection with Quebec, which serves as a major transmission line for the importation of hydroelectric power from Hydro-Québec with a transfer capability of 2,000 MW. ISO-NE states that in early 2026, the addition of the New England Clean Energy Connect Interconnection (a 1,200 MW high-voltage direct-current transmission line from Quebec that will interconnect in Maine) will increase the transfer capability to approximately 4,300 MW.

3. ISO-NE states that the United States and Canadian grids are "highly integrated and reliant on constant, coordinated interchange of energy across the border."<sup>7</sup> ISO-NE explains that the configuration of these grids requires significant cooperation between system operators in the United States and Canada to ensure the reliable operation of the Northeastern United States and Eastern Canada grids.

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 or energy resources."<sup>8</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>9</sup>

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<sup>4</sup> 16 U.S.C. § 825c.

<sup>5</sup> ISO-NE states that it "administers markets for energy, a range of ancillary services, and capacity, pursuant to the terms of the ISO Tariff," and that "[f]or purposes of this filing, these are collectively referred to as 'electricity.'" Filing, Transmittal Letter at 1 n.3.

<sup>6</sup> *Id.* at 5 n.17.

<sup>7</sup> *Id.* at 8.

<sup>8</sup> Exec. Order No. 14,193, 90 Fed. Reg. 9113, § 2(a)-(b) (Feb. 1, 2025).

<sup>9</sup> Exec. Order No. 14,197, 90 Fed. Reg. 9183, § 3 (Feb. 3, 2025) (Canadian Tariff Pause Executive Order).

The Canadian Tariff Executive Order took effect on March 4, 2025.<sup>10</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 related to the Agreement between the United States of America, United Mexican States, and Canada, which took effect on March 7, 2025.<sup>11</sup>

## II. Filing

### A. Canadian Tariff Executive Order Applicability

5. ISO-NE states that “there are significant open questions as to whether, and if so, how, a tariff would be imposed upon imports of electricity into the ISO-administered markets and the basis of any applicable Import Duty.”<sup>12</sup> ISO-NE states that, as of the date of its filing, there has been no regulatory guidance regarding if and how any Import Duties will be applied to imports of electricity from Canada, and whether ISO-NE would be the responsible party for the collection and allocation of such Import Duties, if they are applied.<sup>13</sup> Specifically, ISO-NE states that the imposition of an Import Duty requires formal publication of applicable tariff terms and rates within the Harmonized Tariff Schedule and that regulatory guidance is often provided as to how the Import Duty for such tariffs will be calculated and collected.<sup>14</sup> However, ISO-NE states that, with respect to any Import Duty imposed pursuant to the Canadian Tariff Executive Order on imports of Canadian electricity, neither of these steps has occurred. ISO-NE notes that the Canadian Tariff Executive Order incorporates by reference the definition of “energy and energy resources” provided in Executive Order No. 14,156, issued on January 20, 2025, but that

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<sup>10</sup> 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. 11423 (Mar. 6, 2025).

<sup>11</sup> Exec. Order No. 14,231, 90 Fed. Reg. 11785 (Mar. 11, 2025); *see also* 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>12</sup> Filing, Transmittal Letter at 2.

<sup>13</sup> *Id.* at 2, 5.

<sup>14</sup> *Id.* at 2 (citing International Trade Commission, Harmonized Tariff Schedule of the United States (2025) Rev. 2 (Feb. 2025) (Harmonized Tariff Schedule), <https://hts.usitc.gov/>).

this definition does not explicitly include electricity.<sup>15</sup> Further, ISO-NE states that under the current Harmonized Tariff Schedule Chapter 27, “electrical energy” is identified as a good, but has a “free” tariff designation<sup>16</sup> and is not subject to the border entry procedures through which Customs Duties are imposed.<sup>17</sup> ISO-NE also notes that public statements from a representative of the U.S. International Trade Commission have suggested that—consistent with historical treatment of electricity as an intangible and the complexity of tracking and invoicing interchange of electricity across the United States/Canadian border—electricity may be wholly exempt from the U.S. tariff regime.<sup>18</sup>

6. ISO-NE states that import tariffs are normally assessed upon a designated importer of record, which can be either “the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise.”<sup>19</sup> ISO-NE asserts that it is solely a market administrator, and not the purchaser or the seller for market transactions in electricity, and, therefore, it is not the appropriate entity for imposition of an Import Duty.<sup>20</sup> However, ISO-NE avers that the Canadian Import Tariff Executive Order “has underscored for the ISO that—either with respect to the [Canadian Import Tariff Executive Order] or at some future time—the ISO could be directed by an applicable governmental agency to pay Import Duties for imports of wholesale electricity that is imported into New England from Canada.”<sup>21</sup>

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<sup>15</sup> *Id.* at 5 (citing Exec. Order No. 14,156, 90 Fed. Reg. 8433, §§ 8, 8(a) (Jan. 20, 2025)). This Executive Order defines “energy” or “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).”

<sup>16</sup> Filing, Transmittal Letter at 5-6 (citing Harmonized Tariff Schedule, ch.27, at 27-2 add’l U.S. note 6).

<sup>17</sup> *Id.* (citing Harmonized Tariff Schedule, ch.27, at 27-2 add’l U.S. note 6(b)). ISO-NE states that a draft Harmonized Tariff Schedule implementing the Canadian Tariff Executive Order was made available on February 4, 2025, but was withdrawn before publication. *Id.* at 5 n.19.

<sup>18</sup> *Id.* at 6 n.24 (citing Jon Lamson & Robert Mullin, *Uncertainty Remains Around Energy Tariffs Amid Last-Minute Deals*, RTO Insider (Feb. 3, 2025)).

<sup>19</sup> *Id.* at 6 n.25 (citing 19 U.S.C. § 1484(a)(2)(B)).

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Id.* at 6.

## B. Exigent Circumstances

7. ISO-NE submitted the Import Tariff Cost Recovery Change as an “Exigent Circumstances” filing under section 11.2 of its Participants Agreement.<sup>22</sup> Under section 11.2, in Exigent Circumstances, ISO-NE “may unilaterally, upon written notice to the Participants Committee and Individual Participants, file with the Commission pursuant to Section 205, if necessary, and implement a new or amended Market Rule . . . [or] General Tariff Provision.”<sup>23</sup> ISO-NE states that Exigent Circumstances are present here because, without further action from the President, the Canadian Tariff Executive Order will go into effect on March 4, 2025<sup>24</sup> and ISO-NE could be deemed responsible for paying Import Duties imposed on imports of Canadian electricity into New England, creating a significant financial risk to ISO-NE. In a worst-case scenario, ISO-NE asserts that it could have insufficient funds to pay such Import Duties, which may: (1) add to NEPOOL’s burden through penalties or additional charges and place into question the continued viability of the ISO-NE-administered markets; (2) force ISO-NE to file for bankruptcy protection;<sup>25</sup> and/or (3) result in a federal directive for the nonpaying entity to suspend any importation activity until the nonpayment is rectified, which could have “precipitous, adverse consequences for the reliable operation of the New England grid in light of the high volume of electricity imports from Canada and the physical integration of the U.S. and Canadian electric grids.”<sup>26</sup> Therefore, ISO-NE argues that an effective and

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<sup>22</sup> The Participants Agreement defines “Exigent Circumstances” as “circumstances such that [ISO-NE] determines in good faith that (i) failure to immediately implement a new Market Rule . . . would substantially and adversely affect (A) System reliability or security, or (B) the competitiveness or efficiency of the New England Markets, and (ii) invoking [the normal stakeholder review procedures under the Participants Agreement] would not allow for timely redress of the ISO’s concerns.” ISO New England Inc., Agreements and Contracts, Participants Agreement, § 1(Definitions) (3.0.0), § 1.1 (Defined Terms), Exigent Circumstances. The Participants Agreement further defines “Market Rule” as a rule “for the administration of the New England Markets filed with the Commission in accordance with [the Participants Agreement] and accepted by the Commission.” *Id.* § 1.1 (Defined Terms), Market Rules.

<sup>23</sup> ISO New England Inc. Agreements and Contracts, § 11 (Changes) (1.0.0), § 11.2 (Exigent Circumstances).

<sup>24</sup> Filing, Transmittal Letter at 7 (citing Canadian Tariff Pause Executive Order § 3).

<sup>25</sup> ISO-NE states that an “estimate using import data from the last five years indicates a 10% to 25% tariff on Canadian electricity imports could amount to Import Duties of between \$66 and \$165 million annually.” *Id.* at 2.

<sup>26</sup> *Id.* at 7-8 (citing 19 C.F.R. § 142.26 (2025)).

timely cost collection and allocation mechanism for Import Duties is necessary for its operation of the wholesale markets as well as the reliable coordination of the New England grid with neighboring control areas.<sup>27</sup>

### C. Tariff Revisions

8. ISO-NE states that its Tariff does not currently provide clear direction on how to collect and allocate the costs of any Import Duty imposed on it.<sup>28</sup> ISO-NE states that the Import Duty Cost Recovery Change will permit ISO-NE to collect and allocate any Import Duty it is required to pay at the direction of an authorized governmental agency.<sup>29</sup> ISO-NE explains that the Import Duty Cost Recovery Change is intended to apply not just to the Canadian Tariff Executive Order, but rather is intended to apply to any future Import Duty on Canadian-origin electricity imported into New England that ISO-NE is directed to pay.<sup>30</sup> ISO-NE states that the Import Duty Cost Recovery Change contains three primary components.<sup>31</sup>

9. First, ISO-NE proposes that “[i]f a federal governmental agency assesses [any Import Duty] on the ISO related to the import from Canada into the New England Control Area of a product or service sold under th[e] Tariff, the ISO shall pass through and collect such assessed [Import Duty] in accordance with any federal regulations or guidance governing the imposition and payment of such [Import Duty]” (Collection as Directed by Governmental Agency).<sup>32</sup> Under such circumstances, ISO-NE would be required to notify all Market Participants of the issuance of any such governing federal regulations or guidance.

10. Second, ISO-NE proposes that if an Import Duty is assessed on ISO-NE and no federal regulation or guidance is provided regarding the specific entities or class of

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<sup>27</sup> *Id.* at 8. ISO-NE states that it has provided written notice of its filing to the Secretary of the NEPOOL Participants Committee, as required by section 11.2 and 17.11(e) of the Participants Agreement. *Id.*

<sup>28</sup> *Id.* at 2.

<sup>29</sup> *Id.* at 8.

<sup>30</sup> *Id.* at 3.

<sup>31</sup> *Id.* at 8.

<sup>32</sup> ISO New England Inc. Transmission, Mkts. & Servs. Tariff, § I.5 (Force Majeure, Liability and Indemnification; Collection of Import Duties, Tariffs or Taxes) (3.0.0), § I.5.4.1 (Collection as Directed by Governmental Agency).

entities that are to be assigned the costs of Import Duty payments, or if such regulation or guidance lacks sufficient clarity for purposes of ISO-NE's billing and recovery of such costs, then ISO-NE will collect and allocate the costs of any Import Duty through a temporary cost collection method (Temporary Cost Collection Method).<sup>33</sup> Under this temporary cost collection method, ISO-NE "will collect costs of any [Import Duty] that the ISO is required to pay for a product or service imported from Canada into the United States . . . from the Market Participant importing such product or service, based on the amount of the [Import Duty] attributable to that entity's sales of the subject imported product or service into the ISO-administered markets."<sup>34</sup> ISO-NE opines that the Temporary Cost Collection Method is consistent with cost causation.<sup>35</sup> ISO-NE states that "[p]rinciples of cost causation require the correlation of cost recovery to the act precipitating the incurrence of the costs,"<sup>36</sup> and that these principles have been applied "to the treatment of tax burdens and imports."<sup>37</sup> ISO-NE states that, consistent with these principles, the Temporary Cost Collection Method "allocate[s] the costs of any Import Duties [ISO-NE] is required to pay to the seller of the electricity whose importation of such electricity into the United States gives rise to the applicable duty."<sup>38</sup> ISO-NE further states that an Import Duty is incurred only if the energy is of Canadian origin, and that this makes the Market Participant importing such energy for sale into the ISO-NE-administered market the "causal link" to the assessment of the Import Duty.<sup>39</sup>

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<sup>33</sup> Filing, Transmittal Letter at 8.

<sup>34</sup> ISO New England Inc. Transmission, Mkts. & Servs. Tariff, § I.5 (Force Majeure, Liability and Indemnification; Collection of Import Duties, Tariffs or Taxes) (3.0.0), § I.5.4.2(i) (Temporary Cost Collection Method). ISO-NE states that the Temporary Cost Collection Method will not apply to non-market-based import transactions, such as emergency energy purchases from Canada (which include Emergency Energy purchases, New Brunswick Security Energy purchases, and the settlement of Inadvertent Interchange). Import Duties assessed to ISO-NE pursuant to these import transactions will be collected in accordance with the existing cost allocation provisions specified for such transactions in Tariff sections III.3.2.6, III.3.2.6A and III.3.2.1(p), respectively. *Id.*; Filing, Transmittal Letter at 8-11.

<sup>35</sup> Filing, Transmittal Letter at 13.

<sup>36</sup> *Id.* (citing *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992)).

<sup>37</sup> *Id.* (citing *Trailblazer Pipeline Co.*, 55 FERC ¶ 61,050, at 61,150 (1991)).

<sup>38</sup> *Id.*

<sup>39</sup> ISO-NE explains that "[t]he electricity importer delivers its energy into New England at a point of interconnection that is located within New England. For example, the point of

11. Third, ISO-NE proposes that the Temporary Cost Collection Method will apply only on a temporary basis.<sup>40</sup> ISO-NE explains that, in the event that the Import Duty that gave rise to a Temporary Cost Collection Method is expected to continue beyond 120 days, ISO-NE must, within 120 days of its first invoice to an importing Market Participant under the Temporary Cost Collection Method, file with the Commission under FPA section 205 a replacement cost allocation method (Replacement Cost Allocation Method), which will supplant the Temporary Cost Collection Method and be specific to the particulars of any Import Duties that have been imposed upon ISO-NE.<sup>41</sup> ISO-NE explains that the Temporary Cost Collection Method will remain in effect until the Commission accepts a Replacement Cost Collection Method.<sup>42</sup> ISO-NE avers that the 120-day period will give it sufficient time to engage stakeholders pursuant to the process outlined in its Participants Agreement.<sup>43</sup>

12. ISO-NE proposes that, for any collection and allocation of costs under the Import Duty Cost Recovery Change, ISO-NE will promptly “calculate[e] and issu[e] invoices to the relevant Market Participant, in such a manner as is necessary to ensure such costs are collected in a sufficient time for [ISO-NE] to pay” the relevant Import Duties.<sup>44</sup>

13. ISO-NE requests that the Commission act on the Import Duty Cost Recovery Change no later than March 31, 2025, and that its proposed Tariff revisions become effective March 1, 2025.<sup>45</sup> ISO-NE also requests waiver of the 60-day prior notice requirement. ISO-NE argues that good cause exists to waive the 60-day prior notice requirement because, as of

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delivery for energy flowing over the Phase II Interconnection between New England and Quebec is the Sandy Pond HVDC converter station located in Massachusetts. Thus, the Canadian importer, literally, brings the electricity over the Canada-U.S. border, and delivers it into New England. The electricity import is modeled in the ISO’s power system as entering the New England system at that internal point-of-interconnection, which is also the location utilized for purposes of settling such transactions.” *Id.* at 13 n.33.

<sup>40</sup> *Id.* at 3.

<sup>41</sup> ISO New England Inc. Transmission, Mkts. & Servs. Tariff, I.5, I.5 Force Majeure, Liability and Indemnification (3.0.0), § I.5.4.2(ii) (Replacement Collection Method); Filing, Transmittal Letter at 9.

<sup>42</sup> Filing, Transmittal Letter at 12.

<sup>43</sup> *Id.* at 9.

<sup>44</sup> ISO New England Inc. Transmission, Mkts. & Servs. Tariff, I.5, I.5 Force Majeure, Liability and Indemnification (3.0.0), § I.5.4.3 (Timely Collection of Duty, Import or Tax).

<sup>45</sup> Filing, Transmittal Letter at 14.



the date of its filing, the Canadian Import Tariff Executive Order is scheduled to go into effect on March 4, 2025, and that it is critical for ISO-NE to have clarity on the method it will employ for collecting and allocating the costs of any Import Duties imposed on it should the federal government determine that the Canadian Import Tariff Executive Order applies to imports of Canadian electricity.

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

14. Notice of ISO-NE's filing was published in the *Federal Register*, 90 Fed. Reg. 11537 (Mar. 7, 2025), with interventions and protests due on or before March 10, 2025.

15. A notice of intervention was filed by Massachusetts Department of Public Utilities. Timely motions to intervene were filed by: Vitol Inc.; Calpine Corporation; H.Q. Energy Services (U.S.) Inc.; Massachusetts Department of Energy Resources; Repsol Energy North America Corporation; American Clean Power Association; Massachusetts Electric Company and Nantucket Electric Company; NextEra Energy Resources, LLC; Solar Energy Industries Association; Electric Power Supply Association; Boston Energy Trading and Marketing LLC; Sempra Gas & Power Marketing, LLC; New England State Committee on Electricity; Eversource Energy Service Company; Shell Energy North America (US), L.P. and Rhode Island State Energy Center, LP; Massachusetts Office of the Attorney General; New England Power Pool Participants Committee; Conservation Law Foundation; and Narragansett Electric Company.

16. Timely motions to intervene and comments were filed by: New England Consumer-Owned Systems (NECOS)<sup>46</sup> and Energy New England, LLC (ENE); New England Power Generators Association, Inc. (NEPGA); Public Systems;<sup>47</sup> Green Mountain Power Corporation (GMP); and Potomac Economics (External Market Monitor to ISO-NE (EMM)).

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<sup>46</sup> NECOS include Belmont Municipal Light Department, Block Island Utility District, Braintree Electric Light Department, Clear River Electric & Water District, Danvers Electric Division, Concord Municipal Light Plant, Georgetown Municipal Light Department, Groveland Electric Light Department, Hingham Municipal Lighting Plant, Littleton Electric Light & Water Department, Merrimac Municipal Light Department, Middleborough Gas & Electric Department, Middleton Electric Light Department, North Attleborough Electric Department, Norwood Municipal Light Department, Reading Municipal Light Department, the Village of Hyde Park, Vermont, Taunton Municipal Lighting Plant, Wallingford Electric Division, Wellesley Municipal Light Department, and Westfield Gas & Electric Light Department.

<sup>47</sup> Public Systems include Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, New Hampshire Electric Cooperative, Inc., and Vermont Public Power Supply Authority.

17. Public Citizen, Inc. (Public Citizen) filed a timely motion to intervene and protest. Public Citizen filed additional comments out of time.
18. U.S. Senator Richard Blumenthal, ISO-NE Internal Market Monitor (IMM), and Vermont Utilities<sup>48</sup> submitted timely comments.
19. Motions to intervene out of time were filed by Avangrid, Inc., Vermont Department of Public Service, ALLETE, Inc., and Stowe.
20. On March 17, 2025, ISO-NE filed a motion for leave to answer and an answer to the comments filed by NECOS and ENE and Public Systems and the protest filed by Public Citizen.

#### **IV. Discussion**

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

21. 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.<sup>49</sup>
22. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant the late-filed motions to intervene given the interest of the entities that filed them, the early stage of the proceeding, and the absence of undue prejudice or delay.
23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2024), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept ISO-NE's answer because it has provided information that assisted us in our decision-making process.

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<sup>48</sup> Vermont Utilities include Burlington Electric Department, Village of Hyde Park, Vermont Electric Coop, GMP, Stowe Electric Department (Stowe), and Washington Electric Cooperative, Inc.

<sup>49</sup> Entities that filed comments or protests but did not file a notice of intervention or motion to intervene are not parties to this proceeding. *See* 18 C.F.R. § 385.211(a)(2) (2024) ("The filing of a protest does not make the protestant a party to the proceeding.").

## **B. Substantive Matters**

### **1. Comments**

24. The IMM, GMP, Vermont Utilities, and Public Systems recognize that there is significant uncertainty as to (1) whether any Import Duties will be imposed and, if so, whether it will apply to electrical energy, and (2) which federal government entity may levy Import Duties and how the amount will be collected.<sup>50</sup> The IMM opines that it does not appear that electricity imports from Canada are subject to Import Duties because: (1) the Commission is not statutorily required to participate in the electronic system the United States Customs and Border Protection (Customs and Border Protection) uses to collect custom duties pursuant to the Harmonized Tariff Schedule; (2) the Secretary of the Treasury has not issued regulations governing the entry requirements for imported electricity; and (3) “electrical energy” is listed as “duty free” in Harmonized Tariff Schedule Chapter 27. The IMM states that, absent newly prescribed regulations from the Department of the Treasury, there is no basis for collecting a duty on the import of electricity from Canada.<sup>51</sup>

25. Nevertheless, the IMM and GMP agree that, in the event that Import Duties are assessed on electricity imports from Canada, the Import Duty Cost Recovery Change is a necessary stopgap mechanism that provides certainty necessary to safeguard the efficient and reliable operation of the New England markets.<sup>52</sup> GMP and Vermont Utilities aver that the Import Duty Cost Recovery Change appropriately balances the urgent need to expeditiously implement a temporary collection and recovery mechanism while providing a pathway to develop a replacement method that takes into account further stakeholder input.<sup>53</sup>

26. NEPGA, the IMM, and the EMM agree with ISO-NE that the Temporary Cost Collection Method is consistent with the cost causation principle.<sup>54</sup> The IMM states that the seller is the “party triggering the cross-intertie flow” and that, as the party that physically imports the electricity, the seller is the most direct and proximate trigger for

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<sup>50</sup> GMP Comments at 5; IMM Comments at 2-3; Public Systems Comments at 5; Vermont Utilities Comments at 1.

<sup>51</sup> IMM Comments at 6-9.

<sup>52</sup> *Id.* at 3; GMP Comments at 5.

<sup>53</sup> GMP Comments at 5; Vermont Utilities Comments at 1.

<sup>54</sup> EMM Comments at 2-4; IMM Comments at 1, 4-6; NEPGA Comments at 1-2.

any Import Duty.<sup>55</sup> The IMM contends that, by assigning Import Duties to sellers as opposed to an alternative approach of directly charging load, the Temporary Cost Collection Method allows energy markets to better maintain transparent price signals, accurate dispatch, and incent efficient resource decisions, such as adjusting consumption or investing in local generation or cross-border capacity.<sup>56</sup>

27. The IMM and EMM aver that, under the Temporary Cost Collection Method, the importer will rationally include the costs of any Import Duties in its market offers such that those offers reflect the full marginal cost of the imported energy, ensuring that the offer will be selected whenever it would earn a profit.<sup>57</sup> The EMM explains that this is because ISO-NE's day-ahead and real-time markets accept the lowest cost offers and set a clearing price at each location equal to marginal cost of supplying the location considering transmission losses and congestion from moving power across the grid. Further, the EMM states that, to the extent there is an indirect cost of Import Duties that is borne by electricity consumers, the Import Duty Cost Recovery Change will tend to allocate these costs to the beneficiaries of the imported Canadian electricity; ISO-NE's market design assigns costs to consumers based on the marginal cost of serving demand at each location, and this holds true regardless of whether there is transmission congestion.<sup>58</sup> In contrast, the IMM opines that spreading the costs of Import Duties across load would distort dispatch decisions. For example, the IMM states that collecting Import Duties through an out-of-market pro-rata charge to load would maintain the importer's offer at an artificially low level and the clearing price would not reflect the full cost of imports.<sup>59</sup>

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<sup>55</sup> IMM Comments at 4.

<sup>56</sup> *Id.* at 4-5. The IMM states that, under the Temporary Cost Collection Method, whether the economic burden of any assessed Import Duties ultimately falls on importers or consumers will depend upon market fundamentals, such as limited domestic supply or conditions that make the importer pivotal. *Id.* at 5.

<sup>57</sup> *Id.* at 4-5; EMM Comments at 3. The EMM states that, for example, if the duty rate is 25%, an importer with a cost of supply of \$30 per MWh would not want to be scheduled unless the LMP was going to be at least \$40 per MWh, therefore the importer would have an incentive to mark-up its offer by 33.3% since this would ensure that it receives a sufficient margin to earn a profit after the duty is collected. EMM Comments at 3.

<sup>58</sup> *Id.* at 3-4.

<sup>59</sup> IMM Comments at 5.

28. NEPGA opines that the Temporary Cost Collection Method is a reasonable method to collect Import Duties, particularly in light of the short timeframe ISO-NE had to develop it. NEPGA supports the proposed requirement that ISO-NE engage with stakeholders to develop a Replacement Cost Collection Method, but NEPGA avers that any Replacement Cost Collection Method must maintain the Temporary Cost Collection Method's adherence to the cost causation principle while ensuring that any Import Duties are incorporated into competitive energy market offers and rates.<sup>60</sup>

29. Public Systems state that, while ISO-NE and stakeholders are developing a Replacement Cost Collection Method, ISO-NE should report to stakeholders and the Commission the cost impact of different allocation schemes as well as recordkeeping, reporting and auditing requirements sufficient to ensure stakeholder transparency and enable any true-up mechanisms that may be necessary or appropriate.<sup>61</sup> In particular, Public Systems contend that ISO-NE should examine whether the likely cost impact to load of increased clearing prices could outweigh the cost impact of instead recovering Import Duties through an uplift charge.

30. Public Systems also aver that it is not possible at this time to determine conclusively whether the Temporary Cost Collection Method is just and reasonable.<sup>62</sup> Therefore, Public Systems request that the Commission accept the Import Duty Cost Recovery Change for filing and suspend it for a nominal period, subject to refund. Public Systems explain that doing so will enable parties to seek and the Commission to direct prospective changes to the Temporary Cost Collection Method based on more complete information that may become available before ISO-NE proposes a Replacement Cost Collection Method, and perhaps even before any Import Duties are levied. Public Systems further explain that this approach would enable the Commission to consider, when ISO-NE proposes a Replacement Cost Collection Method, whether to direct ISO-NE to implement the permanent methodology as of the effective date of the Import Duty Cost Recovery Change.

31. NECOS and ENE recognize that ISO-NE “lacks means independent of charges to its [M]arket [P]articipants for the recovery of [I]mport [D]ut[ies]” and that it is therefore appropriate for ISO-NE to revise its Tariff to create a vehicle to recover such Import Duties should they be imposed on ISO-NE.<sup>63</sup> Consequently, NECOS and ENE do not oppose the Import Duty Cost Recovery Change. However, NECOS and ENE request that

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<sup>60</sup> NEPGA Comments at 1-2.

<sup>61</sup> Public Systems Comments at 7.

<sup>62</sup> *Id.* at 6.

<sup>63</sup> NECOS and ENE Comments at 10.

the Commission clarify that any Import Duties imposed under the Temporary Cost Collection Method shall be subject to resettlement and refund in accordance with the Replacement Cost Collection Method ultimately accepted by the Commission. NECOS and ENE contend that this clarification will ensure that ISO-NE's customers will have the input to which they are entitled under the Participants Agreement and that exigent circumstances will only temporarily defer (and not override) the rights of ISO-NE's Market Participants to review and comment on the ultimate allocation of any Import Duties that may be imposed.<sup>64</sup>

## 2. Protests

32. Public Citizen and Senator Blumenthal argue that ISO-NE is a market administrator, not the importer of record of Canadian electricity, and therefore cannot collect import tariffs.<sup>65</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 U.S.—not ISO-NE.<sup>66</sup> Senator Blumenthal asserts that “[a]s the federal entity responsible for ensuring consumers can access reliable energy at affordable rate, [the Commission] should not impose this tax-collecting authority onto ISO-NE,” and that doing so would be “irresponsible” and would drive up costs for Connecticut consumers.<sup>67</sup>

33. Public Citizen explains that electricity has been classified as “duty-free, and Customs and Border Protection has never amended this designation to include import duties on hydroelectric power.”<sup>68</sup> Public Citizen further argues that the phrase “kinetic movement of flowing water” is being used as a basis to impose Import Duties, and that this phrase is not a recognized industry classification for hydroelectric power, and does not appear in any established customs, trade, or energy regulatory framework.<sup>69</sup> Therefore, Public Citizen argues that, absent legally operable tariff classification and uniform enforcement guidelines, the Customs and Border Protection's directive remains

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<sup>64</sup> *Id.* at 10-11.

<sup>65</sup> Public Citizen contends that ISO-NE is not a “tariff collection agent,” and Senator Blumenthal states that ISO-NE “is not a tax collector.” Public Citizen Protest at 1; Senator Blumenthal Comments at 1.

<sup>66</sup> Public Citizen Protest at 1-2.

<sup>67</sup> Senator Blumenthal Comments at 1.

<sup>68</sup> Public Citizen Protest at 3.

<sup>69</sup> *Id.* at 2, 4.

incomplete and requires further clarification before any Commission-jurisdictional entity can move forward with efforts to collect import tariffs.<sup>70</sup>

34. In its additional comments, Public Citizen notes a determination from U.S. Secretary of State Marco Rubio published in the Federal Register on Friday, March 14, 2025 (Secretary of State Determination), stating 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.”<sup>71</sup> According to Public Citizen, the Secretary of State Determination “appears to usurp the [Commission]’s [FPA] authorities to regulate electricity imports, . . . place[s] the U.S. Department of State in control of electricity import matters, and therefore limits the ability of the Commission to approve the tariffs as proposed by” ISO-NE.<sup>72</sup>

### 3. Answer

35. ISO-NE states that, while Public Citizen may be correct that current law would not permit a federal governmental agency to impose on ISO-NE the responsibility of paying Import Duties on Canadian electricity imports into New England, the federal government may interpret the law differently, and it is therefore reasonable and prudent for ISO-NE to have in place a mechanism to collect and allocate the costs of any Import Duties imposed upon it.<sup>73</sup> ISO-NE notes that Public Citizen does not challenge ISO-NE’s arguments as to why the Import Duty Cost Recovery Change meets the requirements of FPA section 205. Further, ISO-NE states that, if Public Citizen is correct and no Import Duty is imposed on ISO-NE, the Import Duty Cost Recovery Change will cause no harm because in that event it will simply be inoperative. Additionally, ISO-NE states its understanding that the Secretary of State Determination has the narrow effect of excluding the issuance of regulations addressing the transfer of goods, services, data, technology and other items across the border (either as imports or exports) from otherwise applicable notice and

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<sup>70</sup> *Id.* at 6.

<sup>71</sup> 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).

<sup>72</sup> Public Citizen Additional Comments at 1.

<sup>73</sup> ISO-NE Answer at 4-5.

comment procedures under the Administrative Procedure Act. ISO-NE avers that the Secretary of State Determination therefore does not change the Commission's jurisdiction under the FPA.<sup>74</sup>

36. With respect to Public Systems' request that ISO-NE perform a cost impact of different allocation schemes during the development of a Replacement Cost Collection Method, ISO-NE opines that such an analysis would require understanding the extent to which importing Market Participants include the costs of Import Duties in their market offers.<sup>75</sup> ISO-NE states that it is not privy to this highly sensitive information and that Canadian importers may be reluctant to provide it to ISO-NE for purposes of performing an impact analysis. ISO-NE therefore requests that, to the extent the Commission deems it necessary for ISO-NE to perform such an impact analysis, that the Commission give ISO-NE significant latitude with respect to how that analysis is performed.

37. In addition, ISO-NE refutes Public Systems' assertion that there is insufficient justification for the Temporary Cost Collection Method, arguing that assigning the costs of Import Duties to the Market Participants responsible for the imports subject to such Import Duties meets the principle of cost causation.<sup>76</sup> In response to NECOS and ENE's and Public Systems' request that the Commission require ISO-NE to resettle any Import Duties collected under the Temporary Cost Collection Method using the Replacement Cost Collection Method ultimately accepted by the Commission, ISO-NE avers that such resettlement would be infeasible and would very likely result in incorrect charges to New England customers. ISO-NE explains that the least-cost market clearing of actual incremental costs will be reflected in the resources that clear and the resulting market clearing prices. ISO-NE contends these "consequences cannot be undone once the market has cleared" because resettling Import Duties using the Replacement Cost Collection Method would require not only undoing the allocation of Import Duties to importing Market Participants but would also require re-clearing the markets with different offers altogether for importers (i.e., offers that do not reflect the allocation of Import Duties to the importing Market Participants).<sup>77</sup>

38. Further, ISO-NE contends that re-settling, or re-clearing, ISO-NE's day-ahead and real-time markets—potentially after 120 or more days—using different energy supply offers or market demand bids resulting from a different cost allocation scheme is

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<sup>74</sup> *Id.* at 2 n.7.

<sup>75</sup> *Id.* at 8.

<sup>76</sup> *Id.* at 7-8.

<sup>77</sup> *Id.* at 5-7.



infeasible for two reasons.<sup>78</sup> First, ISO-NE states that it has neither the tools nor systems necessary to re-clear the markets for such a length of time, and ISO-NE lacks information regarding how the importers would have offered had they not been charged Import Duties. Second, ISO-NE states that re-clearing would pose new financial risks *ex post* to everyone else in New England's energy markets because re-clearing would produce an entirely different market clearing—with different energy awards and different market clearing prices—for all other energy buyers and sellers over the duration of the Temporary Cost Collection Method.

39. ISO-NE also states that, “contrary to the [comments of NECOS and ENE], the ISO’s filing satisfies the Exigent Circumstances provision of the Participants Agreement, therefore permitting the instant filing to proceed without meeting the stakeholder process requirements thereof.”<sup>79</sup>

#### 4. Commission Determination

40. We find that ISO-NE’s proposed Import Duty Cost Recovery Change is just and reasonable, and we accept ISO-NE’s proposed Tariff revisions, effective March 1, 2025, as requested.<sup>80</sup>

41. As discussed below, we find that ISO-NE’s proposal is just and reasonable and not unduly discriminatory or preferential because it provides ISO-NE 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. For example, in accepting ISO-NE’s proposal, we make no finding regarding whether Import Duties imposed pursuant to the Canadian Tariff Executive Order apply to Canadian electricity or whether ISO-NE is required to pay them.

42. We note that the provisions of the Import Duty Cost Recovery Change only apply where a federal governmental agency imposes on ISO-NE the obligation to pay an Import Duty on electricity imported from Canada. Rather than placing ISO-NE in the role of “tax collector” or “tariff collection agent,” the Import Duty Cost Recovery Change is intended to ensure that ISO-NE is not required to pay for costs that, pursuant to federal

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<sup>78</sup> *Id.* at 7.

<sup>79</sup> *Id.* at 7-8.

<sup>80</sup> We grant ISO-NE’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 ISO-NE’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 14.

regulations or guidance (where they exist) or the cost causation principle, are appropriately borne by another entity or class of entities. However, given the exigent circumstances present here, additional transparency is warranted. We direct ISO-NE (1) to submit an informational filing that includes any legal and/or technical guidance and related documentation from the relevant federal authorities showing that a federal agency has assessed an Import Duty on Canadian electricity imports on ISO-NE, triggering ISO-NE's collection authority, as soon as practicable after receiving such invoice 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 ISO-NE.<sup>81</sup>

43. With respect to the proposed revision styled Collection as Directed by Governmental Agency, for the same reasons set forth above, we find that, if a federal agency assesses Import Duties on ISO-NE and provides clear regulations or guidance as to how ISO-NE should collect and allocate the costs of those Import Duties, it is just and reasonable and not unduly discriminatory or preferential to provide ISO-NE clear authority to collect and allocate any Import Duty in accordance with the federal regulations or guidance.<sup>82</sup>

44. As to the Temporary Cost Collection Method, we find that it is just and reasonable and consistent with the cost causation principle for ISO-NE to collect and allocate the costs of any Import Duties assessed on it related to the import of electricity from Canada into New England to the Market Participant importing that electricity. The cost causation principle requires "that all approved rates reflect to some degree the costs actually caused by the customer who must pay them."<sup>83</sup> We agree with ISO-NE and commenters that the

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<sup>81</sup> Each informational filing must be submitted in the same docket number and will not be noticed for comment or subject to Commission action.

<sup>82</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>83</sup> *K N Energy, Inc.*, 968 F.2d at 1300; *Sithe/Indep. Power Partners, L.P. v. FERC*, 285 F.3d 1, 5 (D.C. Cir. 2002) (acknowledging "that feasibility concerns play a role in approving rates" and that the Commission "is not bound to reject any rate mechanism that tracks the cost-causation principle less than perfectly") (citing *Tejas Power Corp. v. FERC*, 908 F.2d 998, 1005 (D.C. Cir. 1990)); *Carnegie Nat. Gas Co. v. FERC*, 968 F.2d 1291, 1293-94 (D.C. Cir. 1992) (noting that the NGA does not include a requirement "that rates precisely match cost causation and responsibility" and that "the Commission may rationally emphasize other, competing policies and approve measures that do not

sale and consequent importation of electricity from Canada into the United States is the “causal link to the assessment of the import duty,”<sup>84</sup> and it is therefore appropriate that the sellers of Canadian electricity be allocated the costs of any Import Duties associated with the importation of such electricity.

45. Further, as noted by the IMM and EMM, the Temporary Cost Collection Method will appropriately ensure that any Import Duties are incorporated into competitive energy market offers and rates, thereby allowing accurate dispatch based on full marginal cost<sup>85</sup> and providing price signals that incent efficient decisions. As the IMM explains, under the Temporary Cost Collection Method, an importer of Canadian electricity will logically include the costs of any Import Duties in its market offers so that those offers reflect the importer’s full marginal cost of the imported energy.

46. We are unpersuaded by Public Citizen’s argument that ISO-NE’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>86</sup> ISO-NE did not argue in its filing that the imposition of Import Duties on Canadian electrical energy is legally permissible or impermissible, nor did ISO-NE 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 ISO-NE, given the concerns ISO-NE has expressed should it wait to request the authority until after any such requirement is imposed on it, 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>87</sup>

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best match the cost responsibility and causation”). *See also San Diego Gas & Elec. Co.*, 180 FERC ¶ 61,095, at P 16 (2022) (finding that accumulated deferred income taxes (ADIT) related to contributions in aid of construction (CIAC) “are most appropriately borne by the party making the CIAC payment because the contributor benefits from the services being provided and this treatment aligns cost recovery with cost causation”).

<sup>84</sup> *See* Filing, Transmittal Letter at 13 & n.33.

<sup>85</sup> *See* ISO New England Inc., Transmission, Mkts. & Servs. Tariff, § III.1 (Market Operations) (72.0.0), § III.1.7.6(a) (requiring ISO-NE to “schedule Day-Ahead and schedule and dispatch in Real-Time Resources economically on the basis of least-cost, security-constrained dispatch and the prices and operating characteristics offered by Market Participants”).

<sup>86</sup> Public Citizen Protest at 2.

<sup>87</sup> We disagree with Public Citizen that the Secretary of State Determination limits our ability to accept the Import Duty Cost Recovery Change. The Secretary of State Determination’s finding that the efforts described therein “constitute a foreign affairs

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>88</sup>

47. With respect to Public Systems’ request that ISO-NE perform a cost impact analysis of different cost allocation methods when developing a Replacement Cost Collection Method, we note that, as a general matter, cost-benefit analyses are not required under FPA section 205,<sup>89</sup> and we decline to require ISO-NE to perform such an analysis here.

48. With respect to Public Systems’ request that we suspend the Import Duty Cost Recovery Change, we find that ISO-NE has provided sufficient evidence to conclude that the Import Duty Cost Recovery Change is just and reasonable, and therefore suspension is not warranted. We disagree with Public Systems’ contention that, because “it is not possible at this time to determine conclusively whether the [Temporary Cost Collection Method] is just and reasonable[,]” the Commission should suspend the Import Duty Cost Recovery Change for a nominal period and allow it to become effective subject to refund.<sup>90</sup> While we agree with Public Systems that there is uncertainty surrounding Import Duties on imports of Canadian electricity—including, *inter alia*, whether such Import Duties will be imposed, how they may be calculated, and whether the responsibility for their collection may be assessed to ISO-NE—we do not believe that the Commission requires answers to these questions to be able to accept the Temporary Cost Collection Method as just and reasonable. Further, while we find that the Temporary Cost Collection Method is a just and reasonable temporary measure, we note that the requirement that ISO-NE file a Replacement Cost Collection Method will ensure that

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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 ISO-NE’s tariff revisions proposed here.

<sup>88</sup> 16 U.S.C. § 824d.

<sup>89</sup> *Am. Elec. Power Serv. Corp.*, 118 FERC ¶ 61,041, at P 18 (2007) (“We did not require that AEP submit a detailed cost-benefit analysis before approving its proposal. A cost-benefit analysis is not required under FPA section[ ] 205 . . . .”); *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172, at P 26 (2008) (declining to condition approval of MISO’s proposal filed under FPA section 205 to implement a day-ahead and real-time ancillary services market on Commission approval of cost-benefit studies).

<sup>90</sup> See Public Systems Comments at 6.

stakeholders have an opportunity to provide their input as to how any specific Import Duties that are expected to continue beyond 120 days should be allocated.<sup>91</sup>

49. We decline to require, as requested by NECOS and ENE, that any Import Duties imposed under the Temporary Cost Collection Method will be subject to resettlement and refund in accordance with the Replacement Cost Collection Method ultimately accepted by the Commission. We find that requiring refunds under these circumstances would violate the rule against retroactive ratemaking.<sup>92</sup> Once accepted, the Temporary Cost Collection Method will become the filed rate, and the Commission could not, in subsequently accepting a Replacement Cost Collection Method, direct refunds “to make up for [utilities’] over- or under-collection” under the Temporary Cost Collection Method.<sup>93</sup> In addition, as ISO-NE states in its Answer, retroactively resettling Import Duties collected under the Temporary Cost Collection Method would require re-clearing the markets with offers that do not include the allocation of Import Duties.<sup>94</sup> Doing so would be infeasible, as ISO-NE does not have the information regarding how importers would have offered into the market had Import Duties not been imposed. Re-clearing the market would also create financial risks to all Market Participants, as doing so would produce different energy awards and market clearing prices for all buyers and sellers of energy in ISO-NE.<sup>95</sup>

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<sup>91</sup> Moreover, we note that if ISO-NE is assessed an Import Duty on Canadian electricity imports, triggering ISO-NE’s collection authority, and if ISO-NE begins paying Import Duties on Canadian electricity imports, the informational filings required herein will provide additional transparency. *See supra* P 42.

<sup>92</sup> *See Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 824-25 (D.C. Cir. 2021) (“Once a tariff is filed, the Commission has no statutory authority to provide equitable exceptions or retroactive modifications to the tariff.”).

<sup>93</sup> *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1227 (D.C. Cir. 2018) (“[T]he rule against retroactive ratemaking ‘prohibits the Commission from adjusting current rates to make up for a utility’s over- or under-collection in prior periods.’” (quoting *Town of Concord v. FERC*, 955 F.2d 67, 71 n.2 (D.C. Cir. 1992))).

<sup>94</sup> *See* ISO-NE Answer at 5-7.

<sup>95</sup> *See PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,252, at P 55 (2017) (“[A]s a general matter, rerunning the markets undermines the markets themselves by creating uncertainty for market participants, and we generally eschew directing them to be rerun.”), *order on reh’g*, 169 FERC ¶ 61,237 (2019). In its answer, ISO-NE states that “contrary to the [comments of NECOS and ENE], the ISO’s filing satisfies the Exigent Circumstances provision of the Participants Agreement, therefore permitting the instant filing to proceed without meeting the stakeholder process requirements thereof.”

The Commission orders:

(A) ISO-NE's proposed revisions are hereby accepted, effective March 1, 2025.

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

By the Commission.

( S E A L )

Debbie-Anne A. Reese,  
Secretary.

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ISO-NE Answer at 8. We do not read the comments of NECOS and ENE as challenging whether ISO-NE has satisfied the Exigent Circumstances provision of the Participants Agreement. *See* NECOS and ENE Comments at 10 (“The NECOS and ENE accept the necessity of ISO-NE’s ‘exigent circumstances’ filing in this proceeding . . . and NECOS and ENE therefore do not oppose ISO-NE’s filing in this proceeding.”). To the extent that ISO-NE in its answer was referring to NECOS and ENE’s request that charges under the Temporary Cost Collection Method be subject to resettlement/refund to ensure “that ISO-NE’s customers will have the input to which they are entitled under the ISO-NE Participants Agreement, and that ‘exigent circumstances’ will only temporarily defer (and not override) the rights of ISO-NE’s market participants,” *id.* at 10-11, we decline to require such resettlements/refunds, for the reasons discussed.