



February 28, 2025

VIA E-TARIFF FILING

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

**Re: ISO New England Inc., Docket No. ER25-____-000;
Exigent Circumstances Filing of Revisions to Transmission, Markets and
Services Tariff to Permit Recovery of Import Duties**

**REQUEST FOR MARCH 1, 2025 EFFECTIVE DATE; REQUEST FOR 10-DAY
COMMENT PERIOD (UNTIL MARCH 10, 2025); REQUEST FOR ORDER BY
MARCH 31, 2025**

Dear Secretary Reese:

Pursuant to Section 205 of the Federal Power Act (“FPA”)¹ and the exigent circumstances provisions of Section 11.2 of the New England Power Pool (“NEPOOL”) Participants Agreement (“Participants Agreement”),² ISO New England Inc. (the “ISO”) hereby electronically submits this transmittal letter and related materials to add language to the ISO’s Transmission, Markets and Services Tariff (the “ISO Tariff”) to permit the ISO to recover any duties, tariffs, or taxes (hereinafter an “Import Duty”) that a federal governmental agency directs the ISO to pay (the “Import Duty Cost Recovery Change”) for Canadian imports of electricity into markets that are administered by the ISO.³

President Trump’s February 1, 2025 Executive Order⁴ imposing import tariffs on goods from Canada, Mexico, and China raised the possibility that Canadian electricity imports administered through the ISO Tariff could be subject to an Import Duty. The

¹ 16 U.S.C. § 824d.

² ISO New England Inc., *Participants Agreement Among ISO New England Inc., the New England Power Pool, and the Individual Participants*, § 11.2, https://www.iso-ne.com/static-assets/documents/2015/10/parts_agree.pdf (last visited Feb. 27, 2025).

³ The ISO administers markets for energy, a range of ancillary services, and capacity, pursuant to the terms of the ISO Tariff. For purposes of this filing, these are collectively referred to as “electricity.”

⁴ Exec. Order No. 14193, *Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border*, § 2(a) (Feb. 1, 2025) (hereinafter “Canadian Import Tariff EO”).

President has delayed the implementation of the Canadian import tariffs until March 4, 2025, pending ongoing discussions with the Government of Canada.⁵

Imposition of an Import Duty requires formal publication of applicable tariff terms and rates within the Harmonized Tariff Schedule⁶ and often are accompanied by regulatory guidance as to how the Import Duty for such tariffs will be calculated and collected. As each of these steps has not yet occurred, 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. Furthermore, the ISO is solely a market administrator, and not the purchaser or seller for market transactions in electricity; thus, it is not the appropriate entity for imposition of an Import Duty. Nevertheless, if tariffs are imposed upon importation of Canadian electricity and the ISO is directed to pay Import Duties for Canadian imports of electricity in the ISO-administered markets, the ISO Tariff must include a process to accommodate the ISO's payment of any imposed Import Duty.

The ISO Tariff does not currently provide clear direction on how to allocate and collect the costs of any Import Duty imposed upon the ISO—which could be substantial given the total transfer capability of the New England/Canada interface and the volume of energy interchange between Canada and the New England market and tariff rates under consideration.⁷ An ISO estimate using import data from the last five years indicates a 10 percent to 25 percent tariff on Canadian electricity imports could amount to Import Duties of between \$66 and \$165 million annually.⁸ The ISO must have adequate funds on hand to pay Import Duties within the applicable deadline. Failure to have a cost-recovery mechanism in place prior to the effective date of a Canadian import tariff would place the ISO at risk of noncompliance with a federal obligation⁹ and, in a worst-case scenario, could force the ISO to seek bankruptcy protection. Further, non-payment of an Import Duty could cause the federal government to take punitive actions that can

⁵ See Exec. Order No. 14197, *Progress on the Situation at Our Northern Border*, § 3 (Feb. 3, 2025) (hereinafter “Canadian Import Tariff Pause EO”). A separate pause has been granted for imports from Mexico into the United States. See Exec. Order No. 14198, *Progress on the Situation at Our Southern Border*, § 3 (Feb. 3, 2025).

⁶ See ITC, Harmonized Tariff Schedule of the United States (2025) Rev. 2 (Feb. 2025) (hereinafter “HTS”), <https://hts.usitc.gov/>.

⁷ On average over the last five years, Canadian imports have served approximately 11 percent of New England's load. With the addition of the New England Clean Energy Connect Interconnection in early 2026, total import capability into New England from Canada will be approximately 4,300 megawatts (“MW”), which is roughly 70 percent of New England's total import capability.

⁸ These numbers were developed by averaging the real-time payments for market-settled imports from Canada over the last five years and then multiplying them by .10 and .25. The actual rate and basis for the calculation of an Import Duty is set by U.S. Customs and Border Protection and, at this time, is unclear.

⁹ See 19 C.F.R. § 141.1(b)(1) (2025) (“The liability for duties, both regular and additional, attaching on importation, constitutes a personal debt due from the importer to the United States which can be discharged only by payment in full of all duties legally accruing, unless relieved by law or regulation.”).

extend to restrictions on Canadian electricity imports into New England until such duties are paid.¹⁰

To prevent such outcomes and reduce the risks to the competitiveness of the markets and the New England system's reliability, the ISO is submitting, on an expedited basis, proposed ISO Tariff changes to put in place a mechanism by which it can collect the costs of any Import Duties that the ISO has been directed to pay for electricity that is imported into the ISO-administered markets from Canada. Given the existing uncertainties in the administration of any tariff on Canadian imports detailed in this transmittal letter, the ISO proposes a *temporary* mechanism that provides it the authority to collect the costs of any Import Duty that a federal agency directs the ISO to pay for Canadian-origin electricity that is sold in the ISO-administered markets. The ISO proposes that Market Participants selling Canadian electricity into the ISO-administered market will be assessed the cost of such Import Duties, which the ISO will collect based on the entity's external transaction sales into New England of the electricity that is subject to the Import Duty. As is discussed in Section V.C of this transmittal letter, this cost allocation is sound under applicable principles of cost causation.

Of utmost importance, the proposed cost-collection method is subject to three conditions specified in the proposed ISO Tariff revisions. *First*, a federal governmental agency must impose upon the ISO the obligation to pay an Import Duty on Canadian-origin electricity imports administered through the ISO Tariff, through the issuance of an invoice to the ISO specifying the amount of such Import Duty the ISO is to remit to that agency. **To underscore this point, cost collection under the Import Duty Cost Recovery Change is only triggered if a federal governmental agency requires the ISO to pay an Import Duty on Canadian imports of electricity administered through the ISO Tariff.** *Second*, unless otherwise directed by the relevant federal agency to seek payment of the Import Duty from a specified entity or class of entities, the ISO will allocate the costs of such imposed Import Duties to the entities selling the assessed electricity into the ISO-administered market. *Third*, under the express provisions of the ISO Tariff proposal, the ISO-proposed cost-collection method applies only on a temporary basis; once the ISO issues the first invoice for the collection of Import Duties, it has 120 days to work with stakeholders and file with the Federal Energy Regulatory Commission ("FERC" or "Commission") a replacement cost-collection mechanism that is specific to the terms and conditions of the import tariff and resulting imposed Import Duties. Finally, the Import Duty Cost Recovery Change is intended to apply not just to the February 1, 2025 Canadian Import Tariff EO, but is intended to apply to any future Import Duty on Canadian-origin electricity imported into New England that the ISO is directed to pay.

As is addressed in Section IV of this transmittal letter, the ISO is submitting the Import Duty Cost Recovery Change under the "Exigent Circumstances" provision of the

¹⁰ *Id.* § 142.26 (Provisions for suspension of all importation privileges for habitual or substantial nonpayment of imposed duties).

Participants Agreement, which permits the immediate filing of changes to the ISO Tariff, without first completing the Participant Processes required under the Participants Agreement, under defined conditions.

As is addressed in Section VI of this transmittal letter, the ISO respectfully requests that these revisions become effective on March 1, 2025, requests a shortened comment period of 10 days, until March 10, 2025, and requests that the Commission issue an order on an expedited basis on or before March 31, 2025.

I. Description of the ISO; Communications

The ISO is the private, non-profit entity that serves as the regional transmission organization (“RTO”) for New England. The ISO plans and operates the New England bulk power system and administers New England’s organized wholesale electricity market pursuant to the ISO Tariff and the Transmission Operating Agreement with the New England Participating Transmission Owners. In its capacity as an RTO, the ISO has the responsibility to protect the short-term reliability of the New England Control Area and to operate the system according to reliability standards established by the Northeast Power Coordinating Council and the North American Electric Reliability Corporation.

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II. Standard of Review

This filing is made pursuant to Section 205 of the FPA, which “gives a utility the right to file rates and terms for services rendered with its assets.”¹¹ Under Section 205, the Commission “plays ‘an essentially passive and reactive’ role”¹² whereby it “can reject [a filing] only if it finds that the changes proposed by the public utility are not ‘just and reasonable.’”¹³ The Commission limits this inquiry “into whether the rates proposed by a

¹¹ *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 9 (D.C. Cir. 2002).

¹² *Id.* at 10 (quoting *City of Winnfield v. FERC*, 744 F.2d 871, 876 (D.C. Cir. 1984).

¹³ *Id.* at 9 (citation omitted).

utility are reasonable—and [this inquiry does not] extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs.”¹⁴ The ISO Tariff modifications herein “need not be the only reasonable methodology, or even the most accurate.”¹⁵ As a result, even if an intervenor or the Commission develops an alternative proposal, the Commission must accept the ISO’s Section 205 filing if it is just and reasonable.¹⁶

III. Background Regarding the Need for a Cost-Collection Method for Import Duties Imposed Upon the ISO.

New England is a major importer of electricity from Canada.¹⁷ On February 1, 2025, President Trump issued the Canadian Import Tariff EO directing the imposition of import tariffs on all articles that are products of Canada.¹⁸ President Trump subsequently paused the implementation of the import tariffs on Canada until March 4, 2025.

The Canadian Import Tariff EO and a preliminary HTS schedule, which was publicly released and then withdrawn,¹⁹ did not include sufficient detail to confirm whether and, if so how, tariff rates would be applied to imports of electricity (e.g., electricity, voltage support, or capacity) from Canada. For example, the Canadian Import Tariff EO addresses “energy and energy resources” with an incorporation by reference of a definition separately used in the National Energy Emergency Executive Order issued on January 20, 2025.²⁰ However, the referenced, underlying definition does not explicitly identify electricity as a component.²¹ Further, under the current HTS Chapter 27,

¹⁴ *Cities of Bethany, Ill. v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984).

¹⁵ *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995).

¹⁶ *Cf. S. Cal. Edison Co.*, 73 FERC ¶ 61,219, at p. 61,608 n.73 (1995) (“Having found the plan to be just and reasonable, there is no need to consider in any detail the alternative plans proposed by the Joint Protesters.”) (citing *Cities of Bethany*, 727 F.2d at 1136)).

¹⁷ Over the last five years, approximately 11 percent of New England’s load was served by imported electricity from Canada. New England’s single largest source is the Phase II Interconnection with Quebec, which serves as a major transmission line for the importation of hydroelectric power from Hydro-Quebec. The Phase II Interconnection has a transfer capability of 2,000 MW; however, as the single largest source contingency, flows in excess of 1,200 MW require consultation with the New York Independent System Operator, Inc. (“NYISO”) and PJM Interconnection, L.L.C. Additionally, the planned New England transfer capability will increase to approximately 4,300 MW upon initiation of commercial operation of the New England Clean Energy Connect Interconnection, a 1,200 MW high-voltage direct-current transmission (“HVDC”) line from Quebec that will interconnect in Maine, which is scheduled to occur in early 2026.

¹⁸ Canadian Import Tariff EO § 2(a).

¹⁹ A draft notice implementing the tariff upon Canadian-origin products was made available in the Advanced Notice Section of the *Federal Register* on February 4, 2025, but withdrawn before publication.

²⁰ Exec. Order No. 14156, *Declaring a National Energy Emergency*, § 8 (Jan. 20, 2025).

²¹ *Id.* § 8(a).

electrical energy is identified as a good, but has a “free” tariff designation²² and is not subject to the border entry procedures through which Customs Duties are imposed.²³ Moreover, 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 U.S./Canadian border—electricity may be wholly exempt from the U.S. tariff regime.²⁴

After consultation with tariff and legal experts, the ISO has reached the pragmatic conclusion that government officials may determine that a Canadian import tariff is applicable to electricity in the ISO-administered markets. Further, the issuance of the Canadian Import Tariff EO has underscored for the ISO that—either with respect to the instant tariff proposal 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.²⁵

Under the current ISO Tariff, the ISO does not have a well-defined mechanism for recovering the costs of any Import Duty it could be required to pay under an import tariff. Accordingly, to address this gap and uncertainty, the ISO is making the instant filing to set forth in the ISO Tariff the steps it will take in the event duties or taxes related to an import tariff are imposed upon it.

²² See HTS, Ch.27, at 27-2 ¶ 6 (2716.00.00 “Electrical Energy”).

²³ *Id.* ¶ 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.”).

²⁴ Jon Lamson & Robert Mullin, *Uncertainty Remains Around Energy Tariffs Amid Last-Minute Deals*, RTO Insider (Feb. 3, 2025) (reporting that “A representative of the U.S. International Trade Commission declined to comment on the executive order, but highlighted a provision in the *Harmonized Tariff Schedule* that states electricity ‘shall not be subject to the entry requirements for imported merchandise set forth in section 484 of the Tariff Act of 1930.’ They also linked a *2021 report* by the ITC that noted “imports of electrical energy are not considered to be subject to the tariff laws of the United States.”).

²⁵ While the potential for imposition of Import Duties upon the ISO exists, the ISO is a market administrator, and not the purchaser or seller of market transactions for energy; thus, it is not the appropriate entity for imposition of an Import Duty. In particular, Import Duties are normally assessed upon a designated importer of record. See 19 U.S.C. § 1484(2)(B). The designation of the importer of record is made to the Customs Service and can be either “the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise.” *Id.* ISO-NE does not have the requisite authorization to export energy from Canada into the United States (which is issued by the Canada Energy Regulator); rather, it clears and settles external transactions (imports and exports) on behalf of the importers and exporters who participate in its markets. In the event that a Canadian Import Tariff is imposed on electricity, the ISO will further engage with relevant federal agencies to explain why it should not be the party responsible for paying or collecting electricity Import Duties.

IV. The ISO Is Submitting This Filing Under the Exigent Circumstances Provision of the Participants Agreement.

The ISO is submitting the Import Tariff Cost Recovery Change as an “Exigent Circumstances” filing under Section 11.2 of the Participants Agreement. Section 11.2 states:

Exigent Circumstances. In Exigent Circumstances, ISO 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, Operating Procedure, Manual, Reliability Standard, provision of the Information Policy (subject to 11.3), General Tariff Provision, or Non-TO OATT Provision.

“Exigent Circumstances” are defined in the Participants Agreement as circumstances such that the ISO determines in good faith that failure to immediately implement a change would substantially and adversely affect either system reliability or security or the competitiveness or efficiency of the New England Markets, and that invoking the normal stakeholder review procedures set forth in Section 11.1, 11.3 or 11.4 of the Participants Agreement would not allow for timely redress of the ISO’s concerns.²⁶

Exigent Circumstances are presented here. While President Trump has delayed implementation of the Canadian import tariffs, without further action they will go into effect on March 4, 2025.²⁷ If additional guidance is provided clarifying that the import of electricity is subject to the Canadian import tariffs, the ISO could be deemed responsible for paying Import Duties imposed on Canadian electricity imports into New England. This presents a significant financial risk to the ISO. While funds available under the ISO’s existing budget could be used to pay such duties, the current ISO Tariff does not include a mechanism for allocating the costs of such Import Duties to the proper parties in accordance with principles of cost causation. At worst, the ISO would have insufficient funds available under its budget to pay such duties or taxes when due, potentially adding to the pool’s burden with penalties or additional charges and placing in question the continued viability of the markets. In a worst-case scenario, the ISO could be forced to file for bankruptcy protection should it have insufficient funds to cover costs stemming from such Import Duties. Further, nonpayment of substantial Import Duties can result in a federal directive for the nonpaying entity to suspend any importation activity until the nonpayment is rectified.²⁸ Such an outcome, driven by the lack of ISO Tariff authorization for the ISO to timely collect the costs of Import Duties, could have

²⁶ See Participants Agreement § 1.1 (Defined Terms); *see also id.* § 11.

²⁷ Canadian Import Tariff Pause EO § 3.

²⁸ See 19 C.F.R. § 142.26 (allowing for suspension of importation authorization for habitual or substantial nonpayment of owed duties).

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.

Under any of these scenarios, the imposition of an Import Duty, without an effective cost-recovery mechanism in place, could adversely impact participation in the wholesale market, potentially undermining its efficiency. Market Participants may question or challenge continued participation in the markets and the delivery of energy to the system under circumstances where there is uncertainty as to the entities bearing the cost of Import Duties, with that uncertainty having a ripple effect on the competitiveness and efficiency of the markets. Notably, the U.S. and Canadian grids are highly integrated and reliant on constant, coordinated interchange of energy across the border. Furthermore, the configuration of these grids requires significant cooperation between system operators in the United States and Canada in order to ensure the reliable operation of the Northeastern U.S., and Eastern Canada grids. Simply, an effective and timely cost-recovery mechanism for Import Duties that may be imposed upon the ISO is a necessary tool required for its operation of the wholesale markets as well as the reliable coordination of the New England grid with neighboring control areas.

The ISO has provided written notice of the proposed Import Duty Cost Recovery Change and of this filing to the Secretary of the NEPOOL Participants Committee, as required by Sections 11.2 and 17.11(e) of the Participants Agreement.

V. Description of and Justification for the Proposed ISO Tariff Revisions.

A. Overview of the Proposed Import Duty Cost Recovery Change.

The ISO is proposing ISO Tariff revisions to permit it to recover any Import Duty it is required to pay at the direction of an authorized governmental agency. The proposed Import Duty Cost Recovery Change contains three primary components. First, it provides the ISO with the authority to collect the costs of any Import Duty imposed upon it by a federal agency in accordance with federal regulations or guidance governing the imposition and payment of such duties, tariffs, or taxes.

The second provision provides that, in the event that there is no regulation or guidance on specific entities or a class of entities that are to be assigned the costs of Import Duty payments, then the ISO will collect the costs of any Import Duty through a *temporary* cost-collection method. Specifically, the ISO will collect the costs of any Import Duty assessed to the ISO on market-based import transactions from the Market Participant importing the electricity for which the duties are assessed. These collections will be based on the amount of the Import Duty that is attributable to that entity's sales into the New England Control Area of the electricity upon which the Import Duty has been imposed. As is addressed below, this proposed cost allocation is just and reasonable under principles of cost causation. For non-market-based import transactions, such as emergency energy purchases from Canada, Import Duties assessed to the ISO will be

collected in accordance with the existing cost-allocation provisions specified for such transactions in the ISO Tariff.

Lastly, the proposal requires the ISO to file with the Commission, within 120 days of its first invoicing under the temporary cost-collection method, a *replacement* cost-allocation method, which will supplant the temporary cost-allocation mechanism and be specific to the particulars of any Import Duties that have been imposed upon the ISO. The 120-day period will give the ISO sufficient time to engage stakeholders pursuant to the process outlined in the Participants Agreement.

The proposed cost-recovery mechanism is intended to apply to *any* Canadian import duties imposed upon the ISO by a federal governmental agency, and is not specific to the Canadian import tariffs that are to go into effect on March 4, 2025. Thus, addition of this language to the ISO Tariff is appropriate even if the current Canadian import tariffs do not go into effect, as it ensures a cost-recovery mechanism is in place in the event duties are imposed on Canadian imports in the future.

B. Detailed Explanation of the Proposed Import Duty Cost Recovery Change

The proposed Import Duty Cost Recovery Change will be located in Section I.5.4 of the ISO Tariff, and states as follows:

I.5.4 Collection of Import Duties, Tariffs or Taxes

I.5.4.1 Collection as Directed by Governmental Agency

If a federal governmental agency assesses import duties, tariffs or taxes on the ISO related to the import from Canada into the New England Control Area of a product or service sold under this Tariff, the ISO shall pass through and collect such assessed duties, tariffs or taxes in accordance with any federal regulations or guidance governing the imposition and payment of such duties, tariff or taxes. The ISO shall notify all Market Participants of the issuance of any federal regulations or guidance which would govern the collection of the costs of an import duty, tariff or tax under this Section 1.5.4.1.

I.5.4.2 Collection in Absence of Direction from Governmental Agency

(i) Temporary Cost Collection Method. If a federal duty, tariff or tax is assessed on the ISO related to the import from Canada into the New England Control Area of a product or service sold under this Tariff, but no federal regulation or guidance is provided regarding the specific entities or class of entities from which the ISO is to collect such duties, tariffs or taxes, or where such regulation or guidance lacks sufficient clarity for purposes of the ISO's billing and recovery of such import duty costs, then,

subject to sub-section (ii) below, the ISO shall collect costs of any import duty, tariff or tax that the ISO is required to pay for a product or service imported from Canada into the United States as follows:

(x) from the Market Participant importing such product or service, based on the amount of the duty, tariff or tax that is attributable to that entity's sales of the subject imported product or service into the ISO-administered markets; except that

(y) duties, tariffs or taxes imposed on Emergency Energy purchases, New Brunswick Security Energy, and Inadvertent Interchange, shall be collected utilizing the cost allocation mechanisms set forth in Sections III.3.2.6, III.3.2.6A and III.3.2.1(p) of the Tariff, respectively.

This temporary cost collection method shall remain in place until the Commission accepts a replacement cost collection method proposed under sub-section (ii) below.

(ii) Replacement Cost Collection Method. In the event the ISO employs a temporary cost collection method under sub-section (i) above and the duty, tariff, or tax is expected to continue beyond the initial 120 days, the ISO shall, within 120 days of the ISO's issuance of the first invoice to an importing Market Participant under sub-section (i) above, file with the Commission under Section 205 of the Federal Power Act a proposed cost collection method to replace the temporary cost collection method. Nothing shall prevent the ISO from proposing in the Section 205 filing to continue use of the temporary cost collection method as the replacement cost collection method.

I.5.4.3 Timely Collection of Duty, Import or Tax

For collection of a duty, import or tax under this Section I.5.4, the ISO shall collect such costs by promptly calculating and issuing invoices to the relevant Market Participant, in such manner as is necessary to ensure such costs are collected in sufficient time for the ISO to pay the import duties, tariffs or taxes when due. Any entity that has an obligation under this Section I.5.4, shall pay to the ISO the amount due within the time specified in the applicable invoice.

The three main components of the proposed ISO Tariff revisions are contained in Sections I.5.4.1 and I.5.4.2 of the provision. Section I.5.4.3 describes the basic mechanics of the collection process to be employed. The remainder of this Section V.B explains the provisions of the proposal in additional detail. Section V.C then explains the rationale for the proposed cost-allocation methodology employed in the temporary cost-collection method.

Section I.5.4.1 – Collection as Directed by Governmental Agency

First, Section I.5.4.1 sets forth the ISO’s right and responsibility to collect Import Duties in the manner instructed in regulations or guidance from the federal governmental agency that is responsible for administering an import tariff, should such instruction be provided. This provision would govern the collection of costs of Import Duties imposed upon the ISO where such regulations or guidance identify the entities or classes of entities from which the ISO should collect any import duties, tariffs, or taxes, in sufficient detail to permit the ISO to carry out those collection functions. Following issuance of any such regulation or guidance by a federal governmental agency, the ISO will provide notice to all Market Participants of the assessment of Import Duty costs to specific entities or classes of entities.

Section I.5.4.2 – Collection in Absence of Direction from Governmental Agency

In the event the regulatory guidance regarding cost collection contemplated in Section I.5.4.1 is not provided, Section I.5.4.2 details the process the ISO is to employ for collecting the costs of an Import Duty imposed on it. Section I.5.4.2 envisions a two-step process.

In the first step, sub-section (i) of Section I.5.4.2 sets forth the *temporary* cost-collection method for the costs of any Import Duties imposed upon the ISO. Under sub-section (i), Import Duties imposed on market transactions will be collected from the Market Participants importing the electricity upon which those duties are assessed. This cost-collection method will be first implemented on a temporary basis until the replacement cost-collection process envisioned in sub-section (ii) is accepted by the Commission. Under sub-section (i), the amount to be collected from the importing Market Participant will be equal to the amount of the imposed duty that is attributable to that entity’s external transaction sales into the ISO-administered markets of the electricity that is subject to the duty, tariff, or tax.

Sub-section (i) contains an exception from this cost collection for Import Duties imposed on non-market-based imports of energy from Canada, which include Emergency Energy purchases, New Brunswick Security Energy purchases, and the settlement of Inadvertent Interchange. Each of these non-market transactions is subject to existing cost-allocation provisions in the ISO Tariff, and the Import Duty Cost Recovery Change contemplates that Import Duties on these non-market transactions will be collected using the cost-allocation mechanisms contained in those existing cost-allocation provisions.²⁹

²⁹ The rights and responsibilities of the ISO and the eastern Canadian Provinces with respect to the request for and provision of Emergency Energy is governed by the coordination agreements the ISO has in place with Hydro-Quebec and the New Brunswick system operator. See ISO New England, Interconnection Operators Agreements Between ISO New England Inc. and Hydro-Quebec Transenergie for the Phase I/II (Jan. 27, 2012) and Highgate Interconnections (Jan. 1, 2007), <https://www.iso-ne.com/participate/governing-agreements/interconnection-operating-asset-owners>, and the Coordination

The final sentence of Section I.5.4.2(i) provides that the temporary cost-collection method in that sub-section will remain in effect until the Commission accepts a replacement cost-collection method under sub-section (ii). This structure requires the ISO to file with the Commission, under Section 205 of the FPA, a replacement cost-collection method within 120 days from the first invoicing of Market Participants for applicable Import Duties. The replacement method will be specific to the Import Duties imposed upon the ISO. For example, if the ISO is being required to pay Import Duties only on Canadian imports of electricity, and not on imports of ancillary services or capacity, the replacement method will detail the cost collection for the recovery of the electricity-specific duties, providing a justification for the proposed cost-allocation method, additional details regarding billing, and explaining consequences and requirements with respect to such matters as Financial Assurance.

Under sub-section (ii), the ISO will have 120 days from the first invoicing of duties to Canadian importers under the temporary cost-collection method to file the replacement method with the Commission. Starting the 120-day clock at the issuance of the ISO's first invoice under the temporary cost-collection method affords the ISO time to focus on implementation of the temporary method before it must turn to development of the replacement method. Allowing up to 120 days to file the replacement method also ensures ample time for the ISO to seek valuable stakeholder input on the proposed replacement method in accordance with the requirements of the Participants Agreement.

Section I.5.4.3 – Timely Collection of Duty, Import, or Tax

Section I.5.4.3 addresses the mechanics of the ISO's collection responsibilities. It requires the ISO to issue invoices in time to ensure that it can remit any duties it is required to pay when due, and in turn requires entities that receive such invoices to pay the amount due to the ISO within the time specified in the invoice.

Section I.5.4.3 contemplates an invoicing and payment process that is independent of the processes and procedures that are provided for under the ISO New England Billing Policy. Given that Section I.5.4 is intended to cover any and all import duties that are imposed upon the ISO, under billing timeframes that will only be specified once the Import Duty is issued, the processes for its implementation must be of a general nature and must not be specific to the billing timelines and categorizations that are

(...continued)

Agreement Between ISO New England Inc. and New Brunswick Power Corporation (Jan 1, 2025) ("New Brunswick Coordination Agreement"), https://www.iso-ne.com/static-assets/documents/regulatory/tariff/attach_f/attach_f.pdf. The allocation of costs for the purchase of Emergency Energy by the ISO under these agreements is addressed in Section III.3.2.6 of the ISO Tariff. The purchase of New Brunswick Security Energy by the ISO is also governed by the New Brunswick Coordination Agreement, and allocation of costs for such purchases is addressed in Section III.3.2.6A of the ISO Tariff. The costs of Inadvertent Interchange, which result when the scheduled energy over external ties differs from the actual energy that flows over the ties, are allocated in accordance with Section III.3.2.1(p) of the ISO Tariff.

contained within the ISO New England Billing Policy.³⁰ However, it is anticipated that the replacement cost-collection method will provide specificity with respect to billing matters and the application of the existing billing procedures contained within the ISO New England Billing Policy.

In accordance with its usual practices, the ISO will post details regarding billing timeframes, processes, and calculation details for the collection import duties on its web site.

C. Allocating the Costs of Import Duties to the Importers of the Products Under the Temporary Cost-Collection Method Is Sound Under the Principle of Cost Causation.

Principles of cost causation require the correlation of cost recovery to the act precipitating the incurrence of the costs.³¹ This principle has been applied to the treatment of tax burdens and imports.³² An import duty applies to the electricity, not the transmission thereof (i.e., transmission service). Following this structure, the ISO proposes to allocate the costs of any Import Duties it 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. An Import Duty is incurred only if the energy is of Canadian origin making the Market Participant importing such energy for sale into the ISO-administered market the causal link to the assessment of the import duty. Scheduling the import is what causes the duty to be incurred.³³

³⁰ The ISO New England Billing Policy contemplates twice-weekly billing for a range of charges, including charges incurred in the energy markets, and monthly billing for a range of other charges. *See* ISO New England Billing Policy, Ex. ID to the ISO Tariff, § 1.3.

³¹ *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992) (cost-causation rule requires “that all approved rates reflect to some degree the costs actually caused by the customer who must pay them”).

³² *See, e.g., Trailblazer Pipeline Co.*, 55 FERC ¶ 61,050, at p. 61,150 (1991) (“[T]he contributor [of a contributions-in-aid-of-construction (“CIAC”)] should bear the tax burden created as a result of its contribution. In other words, ‘[i]f a contributor is to make a CIAC in order to gain services by which he is to benefit, the contributor should pay the full cost of its contribution, *including its tax effect.*’”) (citation omitted; emphasis added).

³³ The electricity importer delivers its energy into New England at a point of interconnection that is located within New England. For example, the point of 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.

VI. Requested Effective Date; Request for Waiver of 60-Day Notice Requirement; Request for Shortened Comment Period and Expedited Commission Action.

The ISO respectfully requests that the Commission permit the ISO Tariff revisions submitted herein to become effective on March 1, 2025, which is one day following the submittal of this filing. Accordingly, the ISO requests waiver of the 60-day prior notice requirement. Good cause exists to waive the 60-day notice requirement. As of the date of this filing, President Trump’s Canadian Import Tariff EO is scheduled to go into effect on March 4, 2025.³⁴ For the reasons discussed in this filing, it is critical for the ISO to have clarity on the method it will employ for collecting the costs of any Import Duties imposed on the ISO, should the federal government determine that the Canadian Import Tariff EO applies to imports of Canadian electricity. As discussed in Section IV above, failure to have in place a well-defined cost-collection method for Import Duties could jeopardize the reliability of the New England system.³⁵ While it is possible that the assessment of Import Duties will be delayed pending the issuance of governing regulations, there is no guaranty of such delay. The ISO must assume, for purposes of its market administration duties, that it could be required to collect Import Duties as of the planned March 4, 2025 implementation of the Canadian Import Tariff EO.

For the foregoing reasons, the ISO also requests the Commission shorten the comment period to 10 days, and issue an order as expeditiously as possible, and in no event later than March 31, 2025. A shortened comment period and order on or before March 31, 2025 will provide the certainty necessary for the ISO to collect the costs of any Import Duties it is required to pay in a timely manner, which will reduce the risks to reliability and market administration addressed herein.

VII. Additional Supporting Information

Section 35.13 of the Commission’s regulations generally requires public utilities to file certain cost and other information related to an examination of traditional cost-of-service rates. However, the Import Duty Cost Recovery Change does not modify a traditional “rate” and the ISO is not a traditional investor-owned utility. Therefore, to the extent necessary, the ISO requests waiver of Section 35.13 of the Commission’s regulations. Notwithstanding its request for waiver, the ISO submits the following additional information in substantial compliance with relevant provisions of Section 35.13 of the Commission’s regulations:

³⁴ See Kevin Breuninger, “Trump says tariffs on Canada and Mexico ‘will go forward,’” CNBC (Feb. 24, 2025), <https://www.cnbc.com/2025/02/24/trump-says-tariffs-on-canada-and-mexico-will-go-forward.html>.

³⁵ See *N.Y. Indep. Sys. Operator, Inc.*, 96 FERC ¶ 61,249, at p. 61,987 (2001) (“Because failure to provide NYISO with accurate information regarding outages and refusal to follow NYISO’s dispatch and other instructions are more likely to compromise the system’s reliability during the summer capability period, we grant NYISO’s request for waiver of the 60-day prior notice requirement to permit a July 3, 2001 effective date.”).

- 35.13(b)(2) – The ISO respectfully requests that the Commission issue an order accepting the ISO Tariff revisions proposed herein to become effective on March 1, 2025.
- 35.13(b)(3) – Pursuant to Section 17.11(e) of the Participants Agreement, Governance Participants are being served electronically rather than by paper copy. The names and addresses of the Governance Participants are posted on the ISO’s website at <http://www/committees/directory/default/committee.action?committeeId=1>. A copy of this transmittal letter and the accompanying materials have also been sent electronically to the governors and electric utility regulatory agencies for the six New England states that comprise the New England Control Area, to the New England Conference of Public Utility Commissioners, and to the Executive Director of the New England States Committee on Electricity. In accordance with Commission rules and practice, there is no need for the Governance Participants or the other entities described above to be included on the Commission’s official service list in the captioned proceeding unless such entities become intervenors in this proceeding.
- 35.13(b)(4) – A description of the materials submitted pursuant to this filing is contained in this transmittal letter. Clean and redlined copies of the revised tariff sheets are included with this eTariff filing.
- 35.13(b)(5) – The reasons for this filing are discussed in Sections III.V of this transmittal letter.
- 35.13(b)(6) – The ISO’s approval of the ISO Tariff revisions proposed herein is evidenced by this filing.
- 35.13(b)(7) – The ISO has no knowledge of any relevant expenses or costs-of-service that have been alleged or judged in any administrative or judicial proceeding to be illegal, duplicative, or unnecessary costs that are demonstrably the product of discriminatory employment practices.
- 35.13(c)(1) – The ISO Tariff revisions filed herein do not modify a traditional “rate,” and the statement required under this Commission regulation is not applicable to the instant filing.
- 35.13(c)(2) – The ISO does not provide services under other rate schedules that are similar to the sale for resale and transmission services it provides under the ISO Tariff.
- 35.13(c)(3) – No specifically assignable facilities have been or will be installed or modified in connection with the revisions proposed herein.

The Honorable Debbie-Anne A. Reese, Secretary

February 28, 2025

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VIII. Conclusion

For the reasons stated herein, the ISO respectfully requests that the Commission accept the ISO Tariff revisions submitted in this filing without condition, modification or hearing, to become effective on March 1, 2025.

Respectfully submitted,

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- Exhibit ID – ISO New England Billing Policy

I.5 Force Majeure, Liability and Indemnification; Collection of Import Duties, Tariffs or Taxes

I.5.1. Force Majeure:

Neither the ISO, a Transmission Owner, a Schedule 20A Service Provider nor a Customer will be considered in default as to any obligation under this Tariff if prevented from fulfilling the obligation due to an event of Force Majeure; notwithstanding the foregoing, no event of Force Majeure affecting any entity shall excuse that entity from any payment, charge, penalty, financial consequence or settlement responsibility that it is obligated to make under this Tariff. An entity whose performance under this Tariff is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations under this Tariff, and shall promptly notify the ISO, the Transmission Owner, a Schedule 20A Service Provider or the Customer, whichever is appropriate, of the commencement and end of each event of Force Majeure.

I.5.2. Liability:

The ISO shall not be liable for money damages or other compensation to the Customer for actions or omissions by the ISO in performing its obligations under this Tariff or any Service Agreement thereunder, except to the extent such act or omission by the ISO is found to result from its gross negligence or willful misconduct. A Transmission Owner shall not be liable for money damages or other compensation to the Customer for acts or omissions by such Transmission Owner in performing its obligations under this Tariff or any Service Agreement thereunder, except to the extent such act or omission by such Transmission Owner is found to result from its gross negligence or willful misconduct. A Schedule 20A Service Provider shall not be liable for money damages or other compensation to the Customer for action or omissions by such Schedule 20A Service Provider in performing its obligations under this Tariff or any Service Agreement thereunder, except to the extent such act or omission by such Schedule 20A Service Provider is found to result from its gross negligence or willful misconduct. To the extent the Customer has claims against the ISO, a Transmission Owner or Schedule 20A Service Provider, the Customer may only look to the assets of the ISO, a Transmission Owner or Schedule 20A Service Provider (as the case may be) for the enforcement of such claims and may not seek to enforce any claims against the directors, members, shareholders, officers, employees or agents of the ISO, a Transmission Owner or Schedule 20A Service Provider or Affiliate who, the Customer acknowledges and agrees, have no personal or other liability for obligations of the ISO, a Transmission Owner or Schedule 20A Service Provider by reason of their status as directors, members, shareholders, officers, employees or agents of the ISO, a Transmission Owner, Schedule 20A Service Provider or Affiliate. In no event shall the ISO, a Transmission Owner, Schedule 20A Service Provider or any Customer be liable for any

incidental, consequential, multiple or punitive damages, loss of revenues or profits, attorneys fees or costs arising out of, or connected in any way with the performance or non-performance under this Tariff or any Service Agreement thereunder. Notwithstanding the foregoing, nothing in this section shall diminish a Customer's obligations under Section I.5.3 of this Tariff or under Schedules 18, 20 and 21 of the OATT.

I.5.3. Indemnification:

Each Customer shall at all times indemnify, defend, and save harmless the ISO, the Transmission Owners and the Schedule 20A Service Providers and their respective directors, officers, members, employees and agents from its properly allocable share of any and all damages, losses, claims and liabilities by or to third parties arising out of or resulting from the performance by the ISO, Transmission Owners or Schedule 20A Service Providers under this Tariff or any Service Agreement thereunder, any bankruptcy filings made by a Customer, or the actions or omissions of the Customer in connection with this Tariff or any Service Agreement thereunder, except in case of the ISO, gross negligence or willful misconduct by the ISO or its directors, officers, members, employees or agents, and, in the case of a Transmission Owner or Schedule 20A Service Provider, the gross negligence or willful misconduct by such Transmission Owner or Schedule 20A Service Provider or its directors, officers, members, employees or agents. Each Customer shall also reimburse the ISO for any indemnity payments made by the ISO pursuant to an operating agreement filed with the Commission. The ISO shall recover the amounts due from each Customer under this Section I.5.3 through Section IV.A of the Tariff in the same manner as the ISO recovers insurance expense (premium) costs, and each Customer shall be responsible for a share of the amounts due from all Customers under this Section I.5.3 that is proportionate to its responsibility for a share of such total insurance expense (premium) costs. The amount of any indemnity payment or reimbursement of indemnity payment hereunder by a Customer shall be reduced (including, without limitation, retroactively) by any insurance proceeds or other amounts actually recovered by the indemnified or reimbursed party in respect of the indemnified action, claim, demand, cost, damage or liability or ISO indemnification payment. The obligations of each Customer to indemnify the ISO, Transmission Owners and Schedule 20A Service Providers shall be several, and not joint or joint and several.

I.5.4 Collection of Import Duties, Tariffs or Taxes

I.5.4.1 Collection as Directed by Governmental Agency

If a federal governmental agency assesses import duties, tariffs or taxes on the ISO related to the import from Canada into the New England Control Area of a product or service sold under this

Tariff, the ISO shall pass through and collect such assessed duties, tariffs or taxes in accordance with any federal regulations or guidance governing the imposition and payment of such duties, tariff or taxes. The ISO shall notify all Market Participants of the issuance of any federal regulations or guidance which would govern the collection of the costs of an import duty, tariff or tax under this Section I.5.4.1.

I.5.4.2 Collection in Absence of Direction from Governmental Agency

(i) Temporary Cost Collection Method. If a federal duty, tariff or tax is assessed on the ISO related to the import from Canada into the New England Control Area of a product or service sold under this Tariff, but no federal regulation or guidance is provided regarding the specific entities or class of entities from which the ISO is to collect such duties, tariffs or taxes, or where such regulation or guidance lacks sufficient clarity for purposes of the ISO's billing and recovery of such import duty costs, then, subject to sub-section (ii) below, the ISO shall collect costs of any import duty, tariff or tax that the ISO is required to pay for a product or service imported from Canada into the United States as follows:

(x) from the Market Participant importing such product or service, based on the amount of the duty, tariff or tax that is attributable to that entity's sales of the subject imported product or service into the ISO-administered markets; except that

(y) duties, tariffs or taxes imposed on Emergency Energy purchases, New Brunswick Security Energy, and Inadvertent Interchange, shall be collected utilizing the cost allocation mechanisms set forth in Sections III.3.2.6, III.3.2.6A and III.3.2.1(p) of the Tariff, respectively.

This temporary cost collection method shall remain in place until the Commission accepts a replacement cost collection method proposed under sub-section (ii) below.

(ii) Replacement Cost Collection Method. In the event the ISO employs a temporary cost collection method under sub-section (i) above and the duty, tariff, or tax is expected to continue beyond the initial 120 days, the ISO shall, within 120 days of the ISO's issuance of the first invoice to an importing Market Participant under sub-section (i) above, file with the Commission under Section 205 of the Federal Power Act a proposed cost collection method to replace the temporary cost collection method. Nothing shall prevent the ISO from proposing in the Section

205 filing to continue use of the temporary cost collection method as the replacement cost collection method.

I.5.4.3 Timely Collection of Duty, Import or Tax

For collection of a duty, import or tax under this Section I.5.4, the ISO shall collect such costs by promptly calculating and issuing invoices to the relevant Market Participant, in such manner as is necessary to ensure such costs are collected in sufficient time for the ISO to pay the import duties, tariffs or taxes when due. Any entity that has an obligation under this Section I.5.4, shall pay to the ISO the amount due within the time specified in the applicable invoice.

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I.5 Force Majeure, Liability and Indemnification; Collection of Import Duties, Tariffs or Taxes

I.5.1. Force Majeure:

Neither the ISO, a Transmission Owner, a Schedule 20A Service Provider nor a Customer will be considered in default as to any obligation under this Tariff if prevented from fulfilling the obligation due to an event of Force Majeure; notwithstanding the foregoing, no event of Force Majeure affecting any entity shall excuse that entity from any payment, charge, penalty, financial consequence or settlement responsibility that it is obligated to make under this Tariff. An entity whose performance under this Tariff is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations under this Tariff, and shall promptly notify the ISO, the Transmission Owner, a Schedule 20A Service Provider or the Customer, whichever is appropriate, of the commencement and end of each event of Force Majeure.

I.5.2. Liability:

The ISO shall not be liable for money damages or other compensation to the Customer for actions or omissions by the ISO in performing its obligations under this Tariff or any Service Agreement thereunder, except to the extent such act or omission by the ISO is found to result from its gross negligence or willful misconduct. A Transmission Owner shall not be liable for money damages or other compensation to the Customer for acts or omissions by such Transmission Owner in performing its obligations under this Tariff or any Service Agreement thereunder, except to the extent such act or omission by such Transmission Owner is found to result from its gross negligence or willful misconduct. A Schedule 20A Service Provider shall not be liable for money damages or other compensation to the Customer for action or omissions by such Schedule 20A Service Provider in performing its obligations under this Tariff or any Service Agreement thereunder, except to the extent such act or omission by such Schedule 20A Service Provider is found to result from its gross negligence or willful misconduct. To the extent the Customer has claims against the ISO, a Transmission Owner or Schedule 20A Service Provider, the Customer may only look to the assets of the ISO, a Transmission Owner or Schedule 20A Service Provider (as the case may be) for the enforcement of such claims and may not seek to enforce any claims against the directors, members, shareholders, officers, employees or agents of the ISO, a Transmission Owner or Schedule 20A Service Provider or Affiliate who, the Customer acknowledges and agrees, have no personal or other liability for obligations of the ISO, a Transmission Owner or Schedule 20A Service Provider by reason of their status as directors, members, shareholders, officers, employees or agents of the ISO, a Transmission Owner, Schedule 20A Service Provider or Affiliate. In no event shall the ISO, a Transmission Owner, Schedule 20A Service Provider or any Customer be liable for any

incidental, consequential, multiple or punitive damages, loss of revenues or profits, attorneys fees or costs arising out of, or connected in any way with the performance or non-performance under this Tariff or any Service Agreement thereunder. Notwithstanding the foregoing, nothing in this section shall diminish a Customer's obligations under Section I.5.3 of this Tariff or under Schedules 18, 20 and 21 of the OATT.

I.5.3. Indemnification:

Each Customer shall at all times indemnify, defend, and save harmless the ISO, the Transmission Owners and the Schedule 20A Service Providers and their respective directors, officers, members, employees and agents from its properly allocable share of any and all damages, losses, claims and liabilities by or to third parties arising out of or resulting from the performance by the ISO, Transmission Owners or Schedule 20A Service Providers under this Tariff or any Service Agreement thereunder, any bankruptcy filings made by a Customer, or the actions or omissions of the Customer in connection with this Tariff or any Service Agreement thereunder, except in case of the ISO, gross negligence or willful misconduct by the ISO or its directors, officers, members, employees or agents, and, in the case of a Transmission Owner or Schedule 20A Service Provider, the gross negligence or willful misconduct by such Transmission Owner or Schedule 20A Service Provider or its directors, officers, members, employees or agents. Each Customer shall also reimburse the ISO for any indemnity payments made by the ISO pursuant to an operating agreement filed with the Commission. The ISO shall recover the amounts due from each Customer under this Section I.5.3 through Section IV.A of the Tariff in the same manner as the ISO recovers insurance expense (premium) costs, and each Customer shall be responsible for a share of the amounts due from all Customers under this Section I.5.3 that is proportionate to its responsibility for a share of such total insurance expense (premium) costs. The amount of any indemnity payment or reimbursement of indemnity payment hereunder by a Customer shall be reduced (including, without limitation, retroactively) by any insurance proceeds or other amounts actually recovered by the indemnified or reimbursed party in respect of the indemnified action, claim, demand, cost, damage or liability or ISO indemnification payment. The obligations of each Customer to indemnify the ISO, Transmission Owners and Schedule 20A Service Providers shall be several, and not joint or joint and several.

I.5.4 Collection of Import Duties, Tariffs or Taxes

I.5.4.1 Collection as Directed by Governmental Agency

If a federal governmental agency assesses import duties, tariffs or taxes on the ISO related to the import from Canada into the New England Control Area of a product or service sold under this

Tariff, the ISO shall pass through and collect such assessed duties, tariffs or taxes in accordance with any federal regulations or guidance governing the imposition and payment of such duties, tariff or taxes. The ISO shall notify all Market Participants of the issuance of any federal regulations or guidance which would govern the collection of the costs of an import duty, tariff or tax under this Section I.5.4.1.

I.5.4.2 Collection in Absence of Direction from Governmental Agency

(i) Temporary Cost Collection Method. If a federal duty, tariff or tax is assessed on the ISO related to the import from Canada into the New England Control Area of a product or service sold under this Tariff, but no federal regulation or guidance is provided regarding the specific entities or class of entities from which the ISO is to collect such duties, tariffs or taxes, or where such regulation or guidance lacks sufficient clarity for purposes of the ISO's billing and recovery of such import duty costs, then, subject to sub-section (ii) below, the ISO shall collect costs of any import duty, tariff or tax that the ISO is required to pay for a product or service imported from Canada into the United States as follows:

(x) from the Market Participant importing such product or service, based on the amount of the duty, tariff or tax that is attributable to that entity's sales of the subject imported product or service into the ISO-administered markets; except that

(y) duties, tariffs or taxes imposed on Emergency Energy purchases, New Brunswick Security Energy, and Inadvertent Interchange, shall be collected utilizing the cost allocation mechanisms set forth in Sections III.3.2.6, III.3.2.6A and III.3.2.1(p) of the Tariff, respectively.

This temporary cost collection method shall remain in place until the Commission accepts a replacement cost collection method proposed under sub-section (ii) below.

(ii) Replacement Cost Collection Method. In the event the ISO employs a temporary cost collection method under sub-section (i) above and the duty, tariff, or tax is expected to continue beyond the initial 120 days, the ISO shall, within 120 days of the ISO's issuance of the first invoice to an importing Market Participant under sub-section (i) above, file with the Commission under Section 205 of the Federal Power Act a proposed cost collection method to replace the temporary cost collection method. Nothing shall prevent the ISO from proposing in the Section

205 filing to continue use of the temporary cost collection method as the replacement cost collection method.

I.5.4.3 Timely Collection of Duty, Import or Tax

For collection of a duty, import or tax under this Section I.5.4, the ISO shall collect such costs by promptly calculating and issuing invoices to the relevant Market Participant, in such manner as is necessary to ensure such costs are collected in sufficient time for the ISO to pay the import duties, tariffs or taxes when due. Any entity that has an obligation under this Section I.5.4, shall pay to the ISO the amount due within the time specified in the applicable invoice.

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