

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Cometa Energia, S.A. de C.V., /o/b/o.,)	
Energia Azteca X, S. de R.L. de C.V.,)	
<i>Complainant</i>)	
)	Docket No. EL24-92-000
v.)	
)	
California Independent System)	
Operator Corporation,)	
<i>Respondent</i>)	

**ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“CAISO” or “Respondent”)¹ hereby answers the March 20, 2024 Complaint filed by Cometa Energia, S.A. de C.V. (“Saavi” or “Complainant”).²

The Commission should deny the Complaint. Saavi’s³ allegations that the CAISO has violated its FERC-approved non-conforming Participating Generator Agreement (“PGA”), has misapplied the Business Practice Manual (“BPM”) for Reliability Requirements (“Reliability Requirements BPM”), or otherwise has acted in an unduly discriminatory manner towards Saavi, are unsupported by the plain language and intent of the PGA, CAISO Tariff, and Reliability Requirements BPM. Moreover, the Complaint asks the Commission to enforce a form of preferential treatment towards

¹ Capitalized terms not otherwise defined herein have the meanings set forth in Appendix A to the CAISO tariff (“Tariff”).

² The CAISO submits this answer pursuant to Rules 206(f) and 213 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.206(f), 385.213 (2023), and the Combined Notice of Filings #1 issued in this proceeding on March 21, 2024.

³ For ease of reference throughout this Answer, Saavi and its affiliate portfolio company Energia Azteca X, S. de R.L. de C.V. (“EAX”) are referenced as “Saavi.”

Saavi and to compel an unjust and unreasonable result that would require reducing deliverability for generators currently providing Resource Adequacy services to the CAISO controlled grid in order to “reinstate” deliverability for a generator that has not been connected to the CAISO for nearly seven years. Accepting Saavi’s interpretation and granting the relief it seeks would undermine important policy goals of the CAISO and the Commission. Indeed, Saavi’s argument, if accepted, leads to the illogical conclusion that it could elect to remain disconnected from the CAISO Balancing Authority Area (“BAA”) in perpetuity and still maintain valuable deliverability. This, essentially, would allow Saavi to hoard such deliverability despite providing no Resource Adequacy capability to ratepayers that finance the delivery network upgrades that make such deliverability possible.

Saavi further fails to justify its position that it should be immune from certain provisions of the Reliability Requirements BPM unless and until such provisions are filed with FERC. Finally, the Commission should reject Saavi’s request to compel the CAISO to initiate discussions regarding the transfer of deliverability rights to Saavi’s planned battery electric storage system (“BESS”).

For these reasons, Saavi has failed to satisfy its burden of proof under Section 206 of the Federal Power Act (“FPA”),⁴ and the Commission should deny the Complaint.

⁴ 16 U.S.C. § 824e.

I. BACKGROUND AND SUMMARY

A. The Role of Deliverability In Resource Adequacy

Deliverability is a critical component in considering the role a generating resource can play and the benefit attributed to that resource in contributing to system and local requirements in the overall Resource Adequacy framework administered by the CAISO and California Public Utilities Commission (“CPUC”), which has jurisdiction over 90 percent of the CAISO load. The concept of deliverability is longstanding. The CAISO developed its initial on-peak deliverability study methodology for Resource Adequacy purposes in 2004, although the value and importance of full capacity deliverability predates even this.

When a generating resource seeks to provide Resource Adequacy capacity—capacity that can be reasonably relied upon in times of system stress to serve customer demand—the CAISO employs its deliverability assessment methodology to ensure that the transmission system can deliver Resource Adequacy capacity from that generator to meet load during stressed system conditions. A generating resource must pass the CAISO’s deliverability test under summer system peak load conditions for its Qualifying Capacity as determined by the CPUC. The amount that meets the test requirements, which may be less than the full Qualifying Capacity initially assigned by the CPUC, is the Net Qualifying Capacity (“NQC”) that can be counted to meet Resource Adequacy requirements. The generating resource passes the deliverability test if it is able to deliver its output to system load under these conditions.⁵

⁵ See CAISO, Deliverability Assessment Methodology Issue Paper, at 3, 5, 8 (May 31, 2023), available at <https://www.caiso.com/InitiativeDocuments/Issue-Paper-Generation-Deliverability-Methodology-Review-May312023.pdf>.

Deliverability under the Tariff reflects a public policy objective of ensuring Resource Adequacy of the CAISO controlled grid. For a generator, being designated as Full Capacity Deliverability Status (“FCDS”) represents that the grid can deliver that generator’s maximum capacity to the grid under peak load conditions,⁶ and further qualifies that generator’s output to count toward a load-serving entity’s monthly Resource Adequacy requirement.⁷

Importantly, deliverability is finite and based on development of delivery network upgrades. Delivery network upgrades are designed specifically to relieve transmission constraints so resources can physically deliver their designated outputs, satisfying procurement portfolios provided by local regulatory authorities. An FCDS generator is assigned initial financing costs for such delivery network upgrades, with the ultimate costs borne by ratepayers through transmission rates.⁸ Unlike for other transmission providers, the CAISO tariff requires transmission owners to reimburse interconnection customers in cash and with interest for financing network upgrades.⁹ The transmission owner then includes those reimbursement costs in its transmission revenue requirement and ultimately ratepayer’s bills.

⁶ *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,292, at PP 94-112 (2008).

⁷ Notably, an FCDS designation does not entitle a generator to “firm capacity” or transmission priority to deliver energy to the grid. All generators are subject to congestion management, the CAISO’s security-constrained economic dispatch and potential curtailment conditions. In other words, an FCDS designation has no bearing on a generator’s market awards or dispatch, only its eligibility to provide Resource Adequacy capacity.

⁸ See Appendix A to the CAISO Tariff. Delivery Network Upgrades are different than Reliability Network Upgrades, which are the transmission facilities a generator needs to interconnect safely and reliably to the grid, regardless of its deliverability designation.

⁹ See Section 11.4.1 of Appendix EE to the CAISO Tariff (requiring reimbursement within five years of commercial operation).

As such, the CAISO only approves network upgrades to provide deliverability capacity commensurate with the Resource Adequacy needs identified by the CPUC's integrated resource plan. In this way, a generator's FCDS designation, and allocation of deliverability to generators, plays a key role in helping California and the West to obtain capacity levels that are needed in the region, and to meet public policy goals while ensuring ratepayers receive the benefit of their bargain.

Reflecting this, the CAISO has emphasized the need to ensure that deliverability goes first to those interconnection customers most likely to deliver their output to the grid, so as to allow load-serving entities to meet their Resource Adequacy obligations without disadvantaging ratepayers.¹⁰ Stranded or unavailable deliverability would result in load-serving entities being unable to meet their obligations—jeopardizing reliability and negatively impacting ratepayers in turn.

B. Saavi's Complaint

The Complaint involves Saavi's combustion turbine Unit C generator ("Unit C"), a 181.5 MW generation resource with a FERC-approved non-conforming PGA with the CAISO.¹¹ The PGA reflects Saavi's status as a cross-border facility, namely, its ability to switch its generation dispatch between the CAISO controlled grid and the Centro Nacional de Control de Energia – Gerencia de Control Regional Baja California ("CENACE-GCRBC") BAA in Mexico, subject to a process defined in the PGA. Saavi

¹⁰ See, e.g., Cal. Indep. Sys. Operator Corp., Transmittal Letter at 8-9, Docket No. ER23-941-000 (Jan. 26, 2023) (stating that the intent of the deliverability allocation process is to allocate deliverability first to projects most likely to provide the deliverable energy to the grid).

¹¹ See First Amended and Restated Participating Generator Agreement (Service Agreement No. 539). The PGA is executed between CAISO and Saavi affiliate EAX.

argues the CAISO unlawfully terminated Unit C's FCDS without notice or justification, in violation of the PGA and contrary to the Reliability Requirements BPM.

Saavi's assertions are without merit for several reasons. Most notably, in 2017 Saavi disconnected Unit C from the CAISO and disassociated Unit C from its Scheduling Coordinator. Consistent with the CAISO Tariff, as of the date Unit C no longer was associated with a Scheduling Coordinator, it could not operate in the CAISO or participate in the CAISO markets as a Resource Adequacy resource or as any other type of generating resource.¹² Because Unit C could no longer operate in the CAISO as of this date and for a consecutive three-year period thereafter, it lost its deliverability status as of 2020 consistent with the CAISO Tariff and Reliability Requirements BPM. In all that time, Saavi provided no energy to the CAISO, and made no effort to engage with the CAISO through a Scheduling Coordinator or to otherwise demonstrate good standing with the CAISO in an effort to preserve its deliverability status.

Saavi—like all CAISO participating generators—is obligated to be knowledgeable of, and comply with, applicable Tariff and BPM requirements. Saavi failed to do so. Moreover, Saavi knew or reasonably should have known that by not having a Scheduling Coordinator it could not participate in the CAISO markets which, if not addressed, could cause it to lose its deliverability status. The Tariff and Reliability Requirements BPM are unambiguous on these points.

¹² See CAISO Tariff §§ 4.5.1, 4.6. See also *EDF Trading N. Am. LLC*, 186 FERC ¶ 61,174, at n.6 (2024); *Cal. Indep. Sys. Operator Corp.*, 185 FERC ¶ 61,210, at n.6 (2023) (noting that “[t]o participate in the CAISO market, an entity must either be a certified Scheduling Coordinator or secure the services of a certified Scheduling Coordinator to act on its behalf.”); *Cal. Indep. Sys. Operator Corp.*, 130 FERC ¶ 61,122, at P 96 (2010) (explaining that “it has always been a basic feature of the CAISO’s market design that all energy market transactions must be conducted through a scheduling coordinator.”).

Saavi's Complaint places great weight on its non-conforming PGA with the CAISO, arguing that the CAISO's actions violate the terms and conditions of its PGA. Although the PGA reflects Unit C's status as a cross-border facility, it does not speak to Saavi's broader obligations as a generator operating under the CAISO Tariff, and certainly does not exempt Saavi from rules of general applicability, including those pertaining to Resource Adequacy and deliverability, or more basic requirements such as the need to be associated with a Scheduling Coordinator to operate within the CAISO. Saavi's position is thus unsupported and unreasonable, and would create an inequitable result. If the Commission accepted Saavi's position, it effectively would be endorsing a form of undue discrimination against all other generating resources in the CAISO. Instead of a single focused right to switch balancing authority areas, Saavi would be able to avoid all of the CAISO rules. Where other generators exercise due diligence and comply with CAISO requirements, Saavi would get a free pass at ratepayers' expense.

Now, more than six years after Unit C disconnected from the CAISO and disassociated from its Scheduling Coordinator, and four years after it lost its deliverability status as a result, Saavi has filed the Complaint. Notably, Saavi is not actually seeking to restore Unit C's deliverability status in order for Unit C to provide Resource Adequacy capacity to the CAISO. In fact, nowhere does Saavi claim that Unit C will return to provide energy (and especially not Resource Adequacy) to the CAISO. Instead, Saavi merely wants its deliverability so it can transfer it to an entirely new BESS resource under development.¹³ Saavi characterizes this as consistent with

¹³ Complaint at 12-13 (citing BPM for Generator Management, Sections 6.5.4 and 13.1.1).

BPM provisions addressing a generator modification or repowering. Saavi's planned development of a BESS, however, is neither a modification to Unit C nor a repowering—it is a new resource for a new interconnection request Saavi submitted last year in cluster 15.

As a matter of law, equity, and feasibility Saavi's requested relief must be denied. Saavi asks the Commission to restore Unit C's deliverability status. To do so, however, the CAISO would need to reduce other generators' deliverability, as further explained in the accompanying Declaration of Robert Sparks.¹⁴ In effect, the CAISO would be penalizing other generating resources that are operating in accordance with applicable Tariff and BPM requirements, and providing necessary Resource Adequacy capacity to California, solely to provide a benefit to Saavi's prospective development of a battery energy storage resource. Saavi's position presumes deliverability is akin to an immutable property right, but this interpretation is incorrect and defies the basic premise of Resource Adequacy and deliverability. Saavi's requested relief would produce an unjust, unreasonable, and unduly discriminatory and preferential result, as well as run afoul of the Commission's prohibition against retroactive ratemaking.

Finally, the Commission should reject Saavi's argument that the Commission's rule of reason instructs that relevant provisions of the Reliability Requirements BPM must be on file with FERC prior to being applied to Saavi. As discussed below, there is no basis for this claim. Rather, applying the rule of reason policy should inform a decision by the Commission to *not* require these provisions of the Reliability Requirements BPM be detailed in the Tariff.

¹⁴ Declaration of Robert Sparks, attached hereto as Attachment A.

II. ANSWER

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, answers to complaints must admit or deny, specifically and in detail, each material allegation of the pleading answered; and set forth every defense relied on.¹⁵ As discussed below, the CAISO denies each of Complainant's material allegations.

A. Saavi Fails to Satisfy its Section 206 Burden of Proof

FPA Section 206 provides that "the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon . . . the complainant."¹⁶ The courts and the Commission have long recognized that a complainant "carries the heavy burden of making a convincing showing that [a rate approved by Commission order] is invalid because it is unjust and unreasonable in its consequences."¹⁷ "Without a showing that the existing rate is unlawful," the Commission "has no authority to impose a new rate."¹⁸

Accordingly, in bringing its Complaint, Saavi has the obligation to demonstrate either that the CAISO violated its Tariff, including the PGA, or has implemented its Tariff or BPMs in a manner that produces an unjust, unreasonable, unduly discriminatory or

¹⁵ 18 C.F.R. § 385.213(c)(2).

¹⁶ *CXA La Paloma, LLC v. Cal. Indep. Sys. Operator Corp.*, 169 FERC ¶ 61,045, at P 36 (2019) (quoting FPA § 206(b)) ("La Paloma"). See also, e.g., *FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 353 (D.C. Cir. 2014); *Md. Pub. Serv. Comm'n v. FERC*, 632 F.3d 1283, 1285 n.1 (D.C. Cir. 2011).

¹⁷ *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944) ("*Hope*"). Although *Hope* addressed section 5 of the Natural Gas Act, the Commission properly applies these bedrock principles to the analogous provisions of the FPA. See *Cal. Mun. Utils. Ass'n v. Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,315, at P 70 (2009), *order on reh'g*, 143 FERC ¶ 61,174 (2013).

¹⁸ *La Paloma* at P 36 (quoting *Emera Maine v. FERC*, 854 F.3d 9, 25 (D.C. Cir. 2017)).

preferential result.¹⁹ Saavi fails to meet this burden. As discussed below, Saavi does not support its claims that the CAISO's actions constitute a violation of the FERC-approved PGA, a misapplication of the Reliability Requirements BPM, or otherwise produce an unjust, unreasonable, unduly discriminatory or preferential result. Absent such a showing, Saavi fails to meet the burden of proof set forth under FPA Section 206. Moreover, granting Saavi's requested relief would produce an inequitable result for ratepayers, by effectively demanding that deliverability status be unjustly and unreasonably revoked from other generators currently providing this Resource Adequacy service. As such, the Commission must deny the Complaint.

B. The CAISO Acted Consistent with the PGA and With Relevant Provisions of the Tariff and Reliability Requirements BPM, and Saavi's Arguments to the Contrary are Unavailing.

1. Saavi's PGA Does Not Exempt it From Generally-Applicable Tariff and BPM Rules and Requirements.

Saavi argues that actions taken by the CAISO with respect to the deliverability status of Unit C violate Saavi's PGA. The PGA reflects Saavi's status as a cross-border facility, and enables Saavi to seek permission from the CAISO for Unit C to be switched to the CENACE-GCRBC BAA in Mexico in various circumstances by means of reconfiguration of the electrical system at the plant to isolate Unit C electrically from the CAISO BAA and to connect it electrically to the CENACE-GCRBC BAA, pursuant to a defined process and requirements. Specifically, Section 4.1.1 of the PGA provides that Saavi may disconnect and connect Unit C from the CAISO controlled grid (and hence the CAISO BAA) upon prior written authorization from the CAISO.

¹⁹ *Id.*

Notwithstanding these provisions, the PGA is unambiguous that Unit C “will be subject to the requirements of the CAISO Tariff at all times”²⁰ and it further obligates Saavi to “comply with all applicable provisions of the CAISO Tariff,” which the PGA incorporates by reference.²¹ Thus, the PGA provides Saavi with certain rights in recognition of Unit C’s unique status while nevertheless making it clear that Saavi is not immune or exempt from other obligations and requirements more broadly applicable to all Participating Generators serving the CAISO BAA, as set forth pursuant to the Tariff.

Like all generating resources, Saavi first and foremost must maintain an association with a Scheduling Coordinator certified by the CAISO in order to operate in the CAISO markets.²² Saavi’s PGA specifically notes this requirement: “The CAISO Tariff provides that the CAISO shall not accept Bids for Energy or Ancillary Services generated by any Generating Unit interconnected to the CAISO Controlled Grid, or to the Distribution System of a Participating TO or of a UDC otherwise than through a Scheduling Coordinator.”²³ Saavi also must be familiar with and abide by Tariff and BPM provisions and requirements that generally apply to all Resource Adequacy resources, so as to ensure deliverability rights are maintained. These are among the most foundational expectations and obligations of CAISO Participating Generators that serve the CAISO BAA, including Saavi. Yet Saavi has failed to observe these requirements.

²⁰ PGA, Section 4.1.1.

²¹ *Id.*, Section 4.2.

²² Section 4.6 of the CAISO tariff (“The CAISO shall not accept Bids for any Generating Unit interconnected to the electric grid within the CAISO Balancing Authority Area (which includes a Pseudo-Tie of a Generating Unit to the CAISO Balancing Authority Area) otherwise than through a Scheduling Coordinator”).

²³ PGA, Clause A.

In 2017, Saavi's Unit C disconnected from the CAISO and that July disassociated from its Scheduling Coordinator. Consistent with the CAISO Tariff, at that point Unit C no longer could operate in the CAISO or participate in the CAISO markets as a Resource Adequacy resource or, for that matter, as any type of generating resource. Three years later, in July 2020, Unit C was still disconnected and not associated with a Scheduling Coordinator, and therefore still could not operate as a participating resource in the CAISO. Because it could not operate in the CAISO, and thus did not have deliverable output for a consecutive three-year period, Unit C lost its deliverability status in July 2020 consistent with relevant Tariff and BPM provisions which apply to all Resource Adequacy resources.

It is incumbent upon Saavi to be aware of its obligations under the Tariff and BPMs and to remain compliant with relevant provisions of both. It is the CAISO's obligation to enforce its Tariff and BPMs; it is *not* the CAISO's obligation to instruct every participant on every potential consequence of its actions or inactions.²⁴ Saavi reasonably should have known that when Unit C no longer had a Scheduling Coordinator, starting July 2017, it could not operate in the CAISO and thus could not provide Resource Adequacy within the CAISO. Likewise, Saavi reasonably should have known in July 2020 that after three consecutive years of being unable to operate in the CAISO and unable to provide Resource Adequacy within the CAISO that Unit C would lose deliverability status. The annual NQC Reports that were posted publicly by the CAISO beginning in 2019 further reflected such change in Unit C's deliverability

²⁴ As part of its enforcement, the CAISO notifies participants when they violate the tariff; however, Saavi did not violate any tariff provision. It simply took permissible actions that had consequences for its future rights; consequences which it is now trying to avoid.

status as a result of its inoperability within the CAISO system. Such information was and continues to be apparent on the face of the Tariff and relevant BPMs. Despite this, Saavi made no effort to engage with the CAISO to resolve these issues or otherwise to demonstrate good standing with the CAISO in an effort to preserve Unit C's deliverability status.

Holding Saavi harmless for its own inactions would violate both the filed rate doctrine and the Federal Power Act's prohibition on unduly preferential treatment. The rules at issue here are not hidden: other generators have lost their deliverability for similar inaction. More critically, many generators go to great lengths every year to produce energy, repower, or engage in replacement construction within three years to *avoid* losing their deliverability.²⁵ Understanding the need to keep deliverability capacity in use, these generators go to considerable time and expense to repower their generators quickly so they do not remain idle. Saavi not only has neglected this requirement, it wants even more time to remain idle and hoard deliverability even longer in case it eventually develops other generation.

2. Saavi's Argument That it Remained "Capable of Operating" as a Resource Adequacy Resource in the CAISO While Being Electrically Isolated from the CAISO Controlled Grid Does Not Logically Follow, and Indeed Undermines, the Concept of Resource Adequacy.

Saavi places outsized emphasis on specific provisions of the Reliability Requirements BPM, employing a tortured reading of the BPM language to support its claims. As discussed above, Unit C could not participate in the CAISO markets as a

²⁵ See Sections 12 and 13 of the BPM for Generator Management (providing various paths to retain deliverability based on the nature of a long outage).

generating resource as of July 2017 when it had disconnected from the CAISO and disassociated from its Scheduling Coordinator, and thus could not provide Resource Adequacy within the CAISO. In July 2020, after a consecutive three-year period of being disconnected and having no Scheduling Coordinator, and thus being unable to participate in the CAISO markets, Unit C lost its deliverability status consistent with provisions of Tariff Section 40.4 and Section 6.1.3.4 of the Reliability Requirements BPM.

Saavi, in an effort to avoid the consequence of Unit C not having a Scheduling Coordinator and not being physically connected to the CAISO grid for the past seven years, argues that Unit C nevertheless remained “capable of operating” under its interpretation of the Reliability Requirements BPM, and thus should retain its deliverability status. According to Saavi, Unit C “remained ‘capable of operating’ (and has, in fact, *operated*) throughout its period of dispatch to the Mexican grid.”²⁶ This reading of the BPM is unsupported by its plain language, and defies its intent. To accept this argument, the Commission must endorse the view that any generator that has no Scheduling Coordinator, is electrically isolated from the CAISO BAA, and is dispatching power to an entirely different control area and country, is nevertheless “capable of operating” at the capacity level associated with its rated deliverability in order to retain deliverability rights in the CAISO. Such a view subverts the plain meaning and intent of the Tariff, the Resource Adequacy framework and the Reliability Requirements BPM, all of which are meant to address Resource Adequacy and ensure reliability in the CAISO BAA.

²⁶ Complaint at 14 (emphasis in original).

As discussed above, deliverability under the Tariff reflects a public policy objective of ensuring Resource Adequacy of the CAISO Controlled Grid for the benefit of ratepayers who ultimately fund the network upgrades to deliver output from generators designated as FCDS. Saavi's interpretation of the BPM language, which it asks the Commission to apply in isolation and independent of other circumstances surrounding its operations, would substantially undermine this important objective. Indeed, were Saavi's interpretation accepted, it would lead to the unjust and unreasonable result where generators could hoard valuable deliverability in perpetuity while never providing a single MW of Resource Adequacy capacity to the CAISO. This is an outcome contrary to the concepts of deliverability and Resource Adequacy, it is not supported nor intended by the Tariff, and would be inequitable to ratepayers funding deliverability-related upgrades to accommodate a Resource Adequacy service they would not receive.²⁷ The Commission should decline to adopt such a plainly illogical and unreasonable reading of the CAISO Tariff and BPMs.

3. The CAISO's Extension Approval Letters Reflect an Exercise of the Parties' Mutual Obligations Under the PGA, and do not Address Saavi's Deliverability Rights or Other Tariff Obligations.

Saavi is mistaken to assume that the disconnect approval letters it received from CAISO pursuant to its PGA exempt it from applicable Tariff and BPM requirements, or otherwise confer upon Unit C a right to remain disconnected from the CAISO BAA in perpetuity while still retaining full deliverability status. These letters merely reflect the

²⁷ For similar reasons, Saavi's arguments that the BPM should not apply to Unit C because it was "neither retired or mothballed" must be rejected. Complaint at 8-9, 13. The BPM process evaluates deliverability and NQC so as to ensure ratepayers receive the benefit of their bargain related to the network upgrade costs they bear for deliverable energy.

CAISO's confirmation of Saavi's election to disconnect Unit C from the CAISO and to connect to the CENACE-GCRBC control area, consistent with agreed-upon protocols under the PGA. None of these letters can be interpreted as exempting Saavi from otherwise applicable requirements under the Tariff and BPMs.²⁸

C. CAISO's Treatment of Saavi is Consistent With its Prior Statements Regarding Deliverability Limitations and Other Similarly-Situated Generators.

Saavi alleges that the CAISO's position regarding Unit C's loss of deliverability is inconsistent with prior statements it has made with respect to the application of Section 6.1.3.4 of the Reliability Requirements BPM. This is incorrect. Saavi points to comments that the CAISO made in a CPUC proceeding involving a generating unit that had just recently retired. The CAISO stated that it would not revoke the deliverability for such a unit until such time as the generator owner indicates that it would not repower the unit *or* until the three-year window set forth in Section 6.1.3.4 closes.²⁹ Saavi makes much of the fact that it never informed the CAISO that it intended to retire Unit C. But this is irrelevant, because as the disjunctive nature of the above sentence makes clear, the CAISO was not committing to allow the generator to retain its deliverability pending

²⁸ In those letters, the CAISO indicated that Saavi that Unit C would not be available or eligible to meet Resource Adequacy requirements in the ISO BAA during the period in which it was disconnected from the CAISO. Saavi suggests that this statement should be read as an acknowledgement that Unit C would retain its deliverability regardless of how long it remained disconnected from the CAISO. However, this statement says nothing of the sort. To the contrary, the fact that the CAISO reminded Saavi that Unit C would not be eligible to meet RA requirements during this period should have put Saavi on notice that the three year limitation on deliverability retention would begin to run, because at that point Saavi was no longer capable of operating at its rated deliverability level for purposes of providing Resource Adequacy capacity to the CAISO BAA.

²⁹ Complaint at 13-14 (citing Comments of the California Independent System Operator Corporation on the Proposed Decision Dismissing Application Without Prejudice, In the Matter of the Application of Southern California Edison Company (U338E) for a Certificate of Public Convenience and Necessity for the Coolwater-Lugo Transmission Project, Docket No. 13-08-023, at 1 (filed May 11, 2015).

a decision on repowering in perpetuity, but rather only within the three year retention window. It has been over six years since Saavi disconnected from the CAISO and disassociated from its Scheduling Coordinator. Therefore, the CAISO's prior statements support, rather than contradict, its position with respect to Saavi's Unit C.

Moreover, as explained in the accompanying Declaration of Robert Sparks, the CAISO has applied this three year limitation to other generators consistent with its treatment of Saavi. This includes situations where it has similarly informed generators of the loss of their deliverability status when such generators had been ineligible to participate in the CAISO markets for more than three years.³⁰ Saavi's claim of discrimination is thus entirely without merit.

D. There is No Basis For Saavi's Claim that Provisions of the Reliability Requirements BPM Should be Filed with FERC.

Saavi argues that the Commission's rule of reason counsels that relevant provisions of the Reliability Requirements BPM must be on file with FERC prior to being implemented.³¹ This is without merit.

Initially, it should be noted that the position in which Saavi finds itself reflects the product of its own making. It did not exercise a reasonable level of due diligence or care to understand, beyond the four corners of the PGA, provisions of the Tariff relevant to its deliverability status, or the implementation details set forth in the Reliability Requirements BPM. The issue is not one of transparency or uncertainty regarding the CAISO BPMs or their implementation relative to the obligations of the Tariff.

³⁰ Declaration of Robert Sparks, Attachment A at 2-4.

³¹ Complaint at 15-16.

In interpreting the FPA, the Federal courts have stated that “there is an infinitude of practices affecting rates and service.”³² Because every tariff cannot include this “infinitude of practices,” the courts and the Commission have held that “only those practices that affect rates and service significantly, that are realistically susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous” must be in tariffs.³³ This is known as the rule of reason. The Commission has described BPMs “as guides for internal operating procedures and to inform market participants of the CAISO’s practices,”³⁴ and also has recognized that implementation details and technical specifications need not be on file under the “rule of reason” especially in contexts where ISOs/RTOs are implementing complex processes that require reasonable flexibility.³⁵

Applying the rule of reason here should inform a decision by the Commission to not require that these provisions of the Reliability Requirements BPM be detailed in the Tariff. Consistent with the principles underpinning the rule of reason, Tariff Section 40.4 makes sufficiently clear that deliverability is not immutable, and indeed can change from year-to-year depending on operational conditions. Section 40.4 details the CAISO’s obligation to undertake a deliverability study annually to determine NQC from a Resource Adequacy Resource, the results of which are incorporated into the annual NQC Report and effective for the next Resource Adequacy Compliance Year. That section further makes clear that “[i]n accordance with the procedures specified in the

³² *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985).

³³ *Id.*

³⁴ *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,313, at P 343 (2007).

³⁵ *See, e.g., Hecate Energy Greene County 3 LLC v. Central Hudson Gas & Elec. Corp.*, 176 FERC ¶ 61,023, *order on reh’g*, 177 FERC ¶ 61,121, at P 46 (2021).

Business Practice Manual,” if the CAISO determines that a Generating Unit included in a Resource Adequacy Plan is not capable of supplying its full Qualifying Capacity amount, its Qualifying Capacity may be reduced for purposes of the annual NQC Report. With such principles and concepts enshrined in the Tariff, the Reliability Requirements BPM is the most appropriate venue for defining the methodologies, process and implementation details used to undertake and produce the deliverability assessment and NQC Report, including the three-year retention limit for units that are not operating or capable of operating at their rated deliverability.

Including such parameters in the BPM and not in the Tariff is appropriate “to provide additional implementation details and transparency about the CAISO’s operations to market participants” and thus falls within the rule of reason.³⁶ As discussed above, numerous generators go to considerable length every year to comply with these requirements.

E. The Commission’s Prohibition Against Retroactive Ratemaking and General Principles of Equity and Estoppel Prohibit Granting Saavi’s Requested Relief.

Saavi asks the Commission to direct the CAISO to reinstate Unit C’s deliverability status, and to direct the CAISO to initiate discussions with respect to the BESS milestones appropriate to retain Saavi’s deliverability rights. The Commission should deny such relief for several reasons.

As discussed above, Unit C lost its rights to provide Resource Adequacy in July 2020, three years after it disconnected from the CAISO grid and disassociated itself

³⁶ *Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,271, at P 84 (2008).

from its Scheduling Coordinator. Saavi knew or reasonably should have known Unit C lost its status when the CAISO publicly posted its 2019, 2020, 2021, 2022 and 2023 annual NQC Reports. Some six years have passed since Saavi was put on notice of this change in deliverability status (or lack thereof). Saavi contends that it first learned Unit C lost its deliverability status in October 2022—nearly a year and a half before filing its Complaint—when its representatives engaged with the CAISO on a wholly unrelated matter involving development of a BESS.³⁷ Saavi does not explain how or why it overlooked this change in status, why it permitted so much time to lapse before filing its Complaint, and why it believes its requested relief is appropriate in light of its failure to exercise due diligence or otherwise to act and assert a claim in a timely manner. In light of this, the Commission should deny Saavi’s requested relief.

Moreover, the relief Saavi requests cannot be granted. In the four years since the 2020 Resource Adequacy Year, the CAISO has allocated deliverability to numerous generators, and has delisted numerous generators via its annual NQC process and NQC Reports. As discussed above, deliverability is finite and based on the delivery network upgrades designed to meet procurement portfolios provided by local regulatory authorities. Those upgrades are financed by ratepayers specifically for the benefit of Resource Adequacy capacity. Thus, any amount of deliverability that is reduced or lost is re-allocated through the CAISO’s annual deliverability allocation process, which awards deliverability to interconnection customers and online Energy Only generators through a scoring process to determine the most commercially viable generators.³⁸ This

³⁷ Complaint at 8.

³⁸ Section 8.9.2 of Appendix DD to the CAISO tariff.

is done to ensure ratepayers receive the benefit of their bargain by awarding deliverability to generators providing load-serving entities with Resource Adequacy capacity.

Saavi seems to presume that “its deliverability” is being re-allocated in the CAISO’s current allocation process. That is incorrect. After July 2020 when Unit C lost its FCDS, that deliverability has been irrevocably awarded to other nearby generators that otherwise would have faced transmission constraints. The CAISO cannot reinstate deliverability status to Unit C without de-allocating deliverability from other generators to which deliverability has been awarded and which are providing load-serving entities in the CAISO BAA with Resource Adequacy capacity for the benefit of ratepayers. Granting Saavi’s requested relief also would run afoul of the Commission’s prohibition against retroactive ratemaking because it would require the CAISO to undo the deliverability allocations to those generators behind the applicable grid constraints that received deliverability years ago and currently are utilizing it pursuant to the CAISO’s filed rate.

For similar reasons the Commission should deny Saavi’s requested relief on equitable grounds. Restoring Unit C’s FCDS could only be accomplished by removing deliverability from generators that are currently included in Resource Adequacy portfolios and providing Resource Adequacy needs. Compelling this result would be unjust and unreasonable, as well as inequitable to affected generators as well as ratepayers responsible for network upgrade costs to enable deliverability from such generators.

The inequity to ratepayers of Saavi's requested relief is underscored by its own representations in the Complaint that its interest in restoring Unit C's deliverability status is not to provide Resource Adequacy from Unit C for the benefit of ratepayers, but to preserve its deliverability for transfer to a future BESS.³⁹ Granting such relief further would risk undercutting the Resource Adequacy framework and related CAISO rules and protocols intended to ensure Resource Adequacy and reliability across the CAISO Controlled Grid.

Finally, for the same reasons, the Commission should decline to grant Saavi's request to direct the CAISO to initiate discussions with respect to the BESS milestones appropriate to retain Saavi's deliverability rights.

F. Even if Saavi Retained its Deliverability, it Would Be Ineligible to Transfer Such Deliverability to its Planned BESS.

Saavi makes no pretense about actually using its deliverability in the near future to provide Resource Adequacy or re-connect Unit C with the CAISO. Instead, Saavi states it wants to eventually transfer the deliverability to a planned storage addition. Saavi requests that the Commission "clarify that EAX has the same transferability rights available to all other interconnection customers located in the CAISO footprint."⁴⁰

Saavi states that its storage development "meet[s] all applicable transfer criteria,"⁴¹ correctly citing to Section 6.5.4 of the BPM for Generator Management for the explanation of the criteria. However, neither those criteria nor the CAISO's transfer rights under Section 8.9.9 of the CAISO's Generator Interconnection and Deliverability

³⁹ Complaint at 12.

⁴⁰ *Id.* at 3.

⁴¹ *Id.* at 13.

Allocation Procedures (“GIDAP”) apply to Saavi. Saavi is not an Interconnection Customer subject to the GIDAP, nor does it have an interconnection agreement with the CAISO. Saavi has a non-conforming PGA with the CAISO because its rights are limited as a Participating Generator with a unique arrangement.

Even assuming *arguendo* those provisions could apply to Saavi, the CAISO would not agree to grandfather a large storage addition into Saavi’s unique non-conforming arrangement for the existing gas units. This Complaint and Saavi’s continued unavailability to the CAISO only demonstrate how challenging and fraught the arrangement has been to administer.

III. THE COMMISSION SHOULD DENY SAAVI’S REQUEST FOR FAST TRACK PROCESSING

Despite having lost its Deliverability status some five year ago, Saavi now seeks fast track processing for its Complaint, claiming a need to ensure its FCDS rights are not reallocated in the upcoming allocation schedule for May 31, 2024.⁴² Saavi argues that absent prompt Commission action to restore Deliverability rights such that it can transfer such rights to its BESS in development, its investments would be imperiled.⁴³ The Commission should deny this request.

The Commission’s regulations are clear that it “may resolve complaints using fast track procedures if the complaint requires expeditious resolution.”⁴⁴ The regulations also require the complainant to explain “why expedition is necessary” and “why the

⁴² Complaint at 3, 17.

⁴³ *Id.*

⁴⁴ 18 C.F.R. § 385.206(h)(1).

standard processes will not be adequate for expeditiously resolving the complaint.”⁴⁵

Saavi fails to satisfy these requirements.

As discussed above, Unit C lost its Deliverability status in 2020, and the CAISO cannot reinstate Unit C’s deliverability status without removing or reducing deliverability from other generators to which it has been awarded over the ensuing years. Saavi learned this fact in 2022, and took no action until now. Thus, there is no urgency associated with Saavi’s Complaint. Its request for fast track processing appears to be premised on the assumption that the Commission can and will grant its requested relief which, as explained above, it cannot do without engaging in retroactive ratemaking to the detriment of ratepayers and Resource Adequacy in the region. The “upcoming allocation schedule for May 31, 2024” to which Saavi refers⁴⁶ does not change the impracticality of the relief it seeks nor does it justify fast track processing of the Complaint. Neither does Saavi’s future BESS, which is not relevant to the deliverability status of Unit C.

As discussed above, the Commission should deny the Complaint outright. Regardless, fast track procedures will not be necessary. Accordingly, the Commission should deny Saavi’s request for fast track processing, as it has done in other cases where the complainant failed to provide adequate support for such a request.⁴⁷

⁴⁵ 18 C.F.R. §§ 385.206(b)(11), 385.206(h)(2).

⁴⁶ Complaint at 3, 17.

⁴⁷ See, e.g., *Sage Grouse Energy Project, LLC v. PacifiCorp*, 153 FERC ¶ 61,272, at P 96 (2015) (denying request for fast-track processing because the complaint failed to justify the request).

IV. SERVICE AND COMMUNICATIONS

All service of pleadings and documents and all communications regarding this proceeding should be addressed to the following:

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V. CONCLUSION

For the foregoing reasons, the Commission should deny the request for fast-track proceeding and deny the Complaint submitted by Saavi in this proceeding.

Respectfully submitted,

/s/ William H. Weaver

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Dated: April 9, 2024

Counsel for the
California Independent System
Operator Corporation

ATTACHMENT A

Declaration of Robert Sparks

On Behalf Of The

California Independent System Operator Corporation

April 9, 2024

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Cometa Energia, S.A. de C.V., /o/b/o.,)
Energia Azteca X, S. de R.L. de C.V,)
Complainant)

Docket No. EL24-92-000

v.)

California Independent System Operator)
Corporation,)
Respondent)

**DECLARATION OF ROBERT SPARKS
ON BEHALF OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

I, Robert Sparks, declare as follows:

I. Background

1. My name is Robert Sparks. My business address is 250 Outcropping Way, Folsom, California, 95630.

2. I am employed by the California Independent System Operator Corporation (“CAISO”) as a Senior Manager, Regional Transmission – South. In this role, I oversee group of engineers responsible for planning the CAISO transmission system in southern California. This work includes assessing deliverability of resources connected to the CAISO transmission system. I have been employed by the CAISO since 1997. I am a licensed Professional Electrical Engineer in the State of California. I hold a Master of Science degree in Electrical Engineering from Purdue University, and a Bachelor of Science degree in Electrical Engineering from California State University, Sacramento.

3. I offer this Declaration in support of the CAISO's Answer to the complaint filed with the Federal Energy Regulatory Commission by Cometa Energia, S.A. de C.V. ("Saavi") (referred to herein as the "Complaint"). With this Declaration I explain how the CAISO's longstanding three-year operational limitation for retaining deliverability has been applied consistently, contrary to Saavi's claim that the CAISO is discriminating against Saavi relative to how it has applied the 3-year limitation to other generators. I also explain how granting Saavi's request for the CAISO to "reinstate" the deliverability for its EAX Combustion Turbine Unit C generator ("Unit C") would require the CAISO to reduce, for a significant period, the Net Qualifying Capacity of generators in the same electrical area as Unit C, which generators are currently providing Resource Adequacy benefits to the CAISO Balancing Authority Area ("BAA").

II. CAISO's Consistent Application of Deliverability Retention Limits

4. Section 6.1.3.4 of the CAISO's Business Practice Manual ("BPM") for Reliability Requirements provides that a generator must operate or be capable of operating at the capacity level associated with its rated deliverability in order to retain its deliverability rights, and that if it becomes incapable of operating at this level for any consecutive three-year period, it loses its deliverability in an amount equal to the reduced capacity. However, deliverability may be retained after the expiration of this three-year period if the generator can demonstrate that it is actively engaged in the construction of replacement generation to be connected at the bus associated with the deliverability priority. In such circumstances, the CAISO and generator identify specific milestones that must be met by the replacement generation (either through the repower process or

through the generation interconnection queue process) in order to preserve the deliverability. This language has been included in the Reliability Requirements BPM since the inception of the Resource Adequacy program in 2005.

5. Under this provision, once a generator is no longer operating or capable of operating at its rated deliverability within the CAISO BAA, whether due to forced outage, scheduled outage, retirement or other circumstances, the three-year period begins to run. However, if at some point during this three-year period the generator can demonstrate to the CAISO that it is actively engaged in the construction of replacement generation, the generator can retain its deliverability for the benefit of the replacement generation. On the other hand, if a generator does not make this demonstration during the three-year period after it ceases to operate or be capable of operating at its deliverability level, then it loses the deliverability. In other words, the CAISO will preserve a non-operating generator's deliverability beyond the three-year period, but only if it makes the necessary demonstration to the CAISO *before the three-year period ends*.
6. The purpose of this approach is to ensure that deliverability is not held back for an unreasonable period of time by resources that cannot operate to the required output level in order to meet Resource Adequacy obligations within the CAISO, particularly when there is no reasonable assurance that it will be utilized by replacement generation. Deliverability is an extremely important and valuable metric to ensure California load obtains the benefit of Resource Adequacy-designated generators, and that sufficient but not excessive transmission is constructed in order to deliver that generation to load.

7. Contrary to Saavi's suggestion, as clearly described in Section 12 of the Generator Management BPM, the CAISO does not provide generators unlimited time to demonstrate an intent to repower or to return the unit to full output, thereby retaining their deliverability. Rather, as I explained above, a generator must make such a demonstration within the three-year period after that generator is no longer operating or capable of operating at its rated deliverability level. In Saavi's case, Saavi did not inform the CAISO of an intent to develop its battery storage project until mid-2022, more than *five years* after Unit C was disconnected from the CAISO grid, and therefore incapable of providing Resource Adequacy to load within the CAISO BAA.
8. The CAISO has applied this rule consistently, similarly declining to allow other requested transfers of existing deliverability to a new generator when the generator owner/operator has failed to make the required demonstration within the three-year period after the generator ceased operating. Several units have lost deliverability after they ceased operations. In contrast, other generators go to considerable effort to produce energy, repower, or begin replacement construction within three years to retain their deliverability.

III. Reinstating Unit C's Deliverability Would Require Net Qualifying Capacity Reductions to Other CAISO Generators

9. The concept of deliverability relates to the CAISO's determination of generators' Net Qualifying Capacity. Under the CAISO's Resource Adequacy construct, a generator's Qualifying Capacity is the maximum amount of Resource Adequacy capacity it is capable of providing. However, a generator's Qualifying Capacity can be reduced based on certain factors, including deliverability restrictions. Any such limitations are

reflected in the generator's Net Qualifying Capacity. The CAISO conducts a deliverability study on an annual basis to assess the extent to which Resource Adequacy Resources are deliverable to load, and the results of this study are incorporated into the Net Qualifying Capacity report that the CAISO produces each year for Resource Adequacy Resources.

- 10.** When a generator loses its deliverability pursuant to the three-year limitation set forth in the Reliability Requirements BPM, the CAISO considers that deliverability as available in its generation interconnection deliverability studies, and thus, such deliverability is permanently allocated to other generators seeking Full Capacity Deliverability Status.
- 11.** In the case of Saavi's Unit C, the deliverability previously associated with that generator has been irrevocably allocated to other generators in the same electrical area as Unit C.
- 12.** There is insufficient transmission capacity to reinstate Saavi's approximately 181 MW of deliverability and maintain the Net Qualifying Capacity of these other generators. Thus, if the CAISO was required to "reinstate" Unit C's deliverability, the CAISO would need to reduce the Net Qualifying Capacity of all generators, behind the applicable deliverability constraints, that are currently providing Resource Adequacy capacity to the CAISO BAA.
- 13.** Specifically if Unit C's deliverability status was restored to FCDS, then approximately 40 generating units behind the East of Miguel Area Constraint would be impacted by NQC MW reductions. Each unit would be curtailed in proportion to the size of the unit

and its distribution factor on the constraint. A few of the larger units would be curtailed by approximately 25 MW each and the smaller units by a few MWs each of their NQC amounts. The total curtailment would be the equivalent of the 181 MW added by Unit C. There may also be other binding constraints impacting additional generating units.

14. This situation is likely to continue until sometime in the early 2030s when the CAISO anticipates that additional transmission capability will be added that would allow for the full deliverability of existing generation along with an additional 181 MW of deliverability previously associated with Saavi's Unit C. Therefore, reinstating Saavi's deliverability would result in significant reductions to the Net Qualifying Capacity values to existing Resource Adequacy Resources for a substantial period. Moreover, this 181 MW of deliverability would go entirely unused until at least 2027, which is when Saavi anticipates its battery storage project would enter service.

15. This concludes my Declaration.

Pursuant to 18 C.F.R. § 385.2005(b)(3), I verify that the foregoing declaration is true and correct to the best of my knowledge, information and belief.

By: /s/ Robert Sparks
Robert Sparks

Executed this 9th day of April, 2024, at Folsom, California.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. this 9th day of April, 2024

/s/ Daniel Klein

Daniel Klein
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