

191 FERC ¶ 61,089  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

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

Docket No. EL24-92-001

v.

California Independent System Operator Corporation

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING, AND SETTING  
ASIDE PRIOR ORDER, IN PART

(Issued April 29, 2025)

1. On June 27, 2024, the Commission issued an order denying a complaint filed by Cometa Energia, S.A. de C.V. (Saavi)<sup>1</sup> against the California Independent System Operator Corporation (CAISO) alleging that CAISO unlawfully terminated the deliverability status of Saavi's 181.5 megawatt (MW) combustion turbine generating unit (Unit C).<sup>2</sup> On July 29, 2024, Saavi timely filed a request for rehearing.

2. Pursuant to *Allegheny Defense Project v. FERC*,<sup>3</sup> the rehearing request filed in this proceeding may be deemed denied by operation of law. However, as permitted by

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<sup>1</sup> Cometa, Saavi, and Energia Azteca X, S. de R.L. de C.V. (EAX) are known as portfolio companies of the Saavi conglomerate of energy companies. We refer to the Complainant as "Saavi."

<sup>2</sup> *Cometa Energia, S.A. de C.V. v. Cal. Indep. Sys. Operator Corp.*, 187 FERC ¶ 61,193 (2024) (Complaint Order).

<sup>3</sup> 964 F.3d 1 (D.C. Cir. 2020) (en banc).

section 313(a) of the Federal Power Act,<sup>4</sup> we are modifying the discussion in the Complaint Order and setting aside the order, in part, as discussed below.<sup>5</sup>

## **I. Background**

### **A. CAISO Terminates Unit C's Full Capacity Deliverability Status**

3. Saavi operates Unit C, which is located in Mexico but has interconnection rights to the CAISO-controlled transmission grid.<sup>6</sup> CAISO granted Unit C “Full Capacity Deliverability Status,” which represents that the grid can deliver a generating unit’s full capacity under peak load conditions due to sufficient delivery network upgrades.<sup>7</sup> This status enables a generating unit to count toward load serving entities’ resource adequacy obligations in an amount termed “Net Qualifying Capacity.”<sup>8</sup> A generating unit’s Net Qualifying Capacity is its “Qualifying Capacity”—the maximum resource adequacy capacity it can provide—reduced by factors such as performance criteria.<sup>9</sup> CAISO produces an annual report of Net Qualifying Capacity values for each resource adequacy compliance year.<sup>10</sup> CAISO Open Access Transmission Tariff (Tariff) section 40.4.4 states that a generating unit “can have its Qualifying Capacity reduced, for ... the Net Qualifying Capacity annual report ... for the next Resource Adequacy Compliance Year, if a CAISO testing program determines that it is not capable of supplying the full Qualifying Capacity amount.”<sup>11</sup> A generating unit’s Net Qualifying

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<sup>4</sup> 16 U.S.C. § 825l(a) (“Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.”).

<sup>5</sup> *Allegheny Def. Project*, 964 F.3d at 16-17.

<sup>6</sup> March 20, 2024 Complaint at 1, 5-6 (Complaint).

<sup>7</sup> *Id.* at 1, 8; CAISO, CAISO eTariff, app. A (Definitions), Full Capacity Deliverability Status (1.0.0).

<sup>8</sup> CAISO, CAISO eTariff, app. A (Definitions), Net Qualifying Capacity (0.0.0).

<sup>9</sup> *Id.*; *id.* Qualifying Capacity (1.0.0).

<sup>10</sup> CAISO, CAISO eTariff, § 40.4.2 (Net Qualifying Capacity Report) (0.0.0).

<sup>11</sup> *Id.* § 40.4.4 (Reductions for Testing) (4.0.0).

Capacity may thus decrease one year and increase the next but cannot exceed the unit's Full Capacity Deliverability Status amount.

4. Unit C has a participating generator agreement (PGA) with CAISO, which allows it to dispatch in CAISO or Mexico's Comisión Federal de Electricidad (CFE).<sup>12</sup> Starting in 2017, Unit C disconnected from CAISO and then connected to CFE for over three consecutive years.<sup>13</sup> Unit C remains disconnected from CAISO.<sup>14</sup> During this period, Saavi sent CAISO periodic notifications of the disconnection, and CAISO responded with letters acknowledging Unit C's disconnection.<sup>15</sup>

5. On October 20, 2022, CAISO informed Saavi that Unit C had lost its Full Capacity Deliverability Status pursuant to section 6.1.3.4 of CAISO's Business Practice Manual (BPM) for Reliability Requirements.<sup>16</sup> That BPM provision states that if "a Generating Unit becomes incapable of operating" "for any consecutive three-year period," then it will lose its deliverability status.<sup>17</sup> CAISO determined that Unit C had been incapable of operating because it had been connected to CFE for three consecutive years, and CAISO thus terminated Unit C's deliverability status.<sup>18</sup>

#### **B. Saavi Complaint**

6. Saavi filed a complaint against CAISO on March 20, 2024, alleging that CAISO unlawfully terminated Unit C's deliverability status.<sup>19</sup> Saavi alleged, as relevant here, that for CAISO to terminate Unit C's deliverability status, the rule of reason requires that

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<sup>12</sup> Complaint Order, 187 FERC ¶ 61,193 at P 2; *see also* Complaint, Ex. A (PGA).

<sup>13</sup> Complaint Order, 187 FERC ¶ 61,193 at PP 3, 5.

<sup>14</sup> Complaint at 10 ("Unit C has been in an extended period of CFE service to address reliability issues in CFE."); *see also id.* Ex. B at 4 ("[W]e transitioned to an extended period serving CFE in 2017.").

<sup>15</sup> *Id.* Ex. C at 1.

<sup>16</sup> *Id.* Ex. E at 1.

<sup>17</sup> CAISO, BPM for Reliability Requirements, § 6.1.3.4, <https://bpmcm.caiso.com/Pages/BPMDetails.aspx?BPM=Reliability%20Requirements>.

<sup>18</sup> Complaint Order, 187 FERC ¶ 61,193 at P 5.

<sup>19</sup> Complaint at 1.

the provision for doing so be in the Tariff.<sup>20</sup> The rule of reason provides that tariffs must include practices that “affect rates and service significantly,” “are realistically susceptible of specification,” and “are not so generally understood in any contractual arrangement as to render recitation superfluous.”<sup>21</sup> Saavi argued that CAISO’s practice for terminating deliverability status satisfies these criteria and thus must be included in the Tariff.<sup>22</sup> Saavi also argued that the termination violated the PGA, was unduly discriminatory, and relied on a misinterpretation of the BPM provision.<sup>23</sup> Saavi contended further that CAISO’s disconnection extension letters did not indicate Unit C was at risk of losing deliverability status.<sup>24</sup> Specifically, Saavi alleged CAISO stated that “during the time period it is connected to CFE, [Unit C] will no longer be available or eligible to meet Resource Adequacy requirements.”<sup>25</sup>

7. Saavi requested that the Commission direct CAISO to reinstate Unit C’s deliverability status.<sup>26</sup> Saavi alleged that it intends to transfer that reinstated status to a planned battery electric storage system (BESS) that will achieve commercial operation in the third quarter of 2027.<sup>27</sup>

8. CAISO answered, as relevant here, that Saavi’s requested relief would have negative consequences. CAISO provided a declaration by Robert Sparks, Senior Manager for Regional Transmission – South.<sup>28</sup> Mr. Sparks stated that if CAISO were to reinstate Unit C’s deliverability status, “then approximately 40 generating units behind the East of Miguel Area Constraint would be impacted by [Net Qualifying Capacity] MW reductions” and “[t]he total curtailment would be the equivalent of the 181 MW added by

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

<sup>21</sup> *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (*City of Cleveland*).

<sup>22</sup> Complaint at 15-16.

<sup>23</sup> *Id.* at 9.

<sup>24</sup> *Id.* at 7.

<sup>25</sup> *Id.* Ex. C at 1.

<sup>26</sup> *Id.* at 19.

<sup>27</sup> *Id.* at 7-8, 12.

<sup>28</sup> CAISO April 9, 2024 Answer, Decl. PP 1-2.

Unit C.”<sup>29</sup> The Net Qualifying Capacity reductions would thus reduce the amount of resource adequacy capacity those units could provide.<sup>30</sup> CAISO stated that “[s]tranded or unavailable deliverability would result in load-serving entities being unable to meet their [resource adequacy] obligations—jeopardizing reliability.”<sup>31</sup>

### C. Complaint Order

9. On June 27, 2024, the Commission denied the complaint.<sup>32</sup> The Commission first found that CAISO’s actions were consistent with the Tariff and not based on a misinterpretation of the BPM provision regarding deliverability status.<sup>33</sup> In short, the Commission found that because Saavi was connected to CFE and lacked a scheduling coordinator, it was “incapable of operating” under the BPM provision.<sup>34</sup> The Commission next found that CAISO’s termination of Saavi’s deliverability status thus also adhered to the PGA because the PGA states that Unit C is “subject to the requirements of the CAISO Tariff” and obligates Saavi to “comply with all applicable provisions of the CAISO Tariff.”<sup>35</sup>

10. On the rule of reason, the Commission stated that it was unpersuaded by Saavi’s arguments.<sup>36</sup> The Commission explained that, under the U.S. Court of Appeals for the District of Columbia Circuit’s (D.C. Circuit) recent decision in *Hecate*, even significant and specifiable practices need not be in a tariff when they are clearly implied by the tariff’s express terms.<sup>37</sup> The Commission found that the Tariff “clearly implied” the

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<sup>29</sup> *Id.* P 13.

<sup>30</sup> *Id.* P 9; *see also* CAISO, CAISO eTariff, app. A (Definitions), Net Qualifying Capacity (0.0.0); *id.* Qualifying Capacity (1.0.0).

<sup>31</sup> CAISO April 9, 2024 Answer at 5.

<sup>32</sup> Complaint Order, 187 FERC ¶ 61,193 at P 42.

<sup>33</sup> *Id.* PP 42-45, 47.

<sup>34</sup> *Id.* P 47.

<sup>35</sup> PGA, §§ 4.1.1, 4.2; Complaint Order, 187 FERC ¶ 61,193 at P 46.

<sup>36</sup> Complaint Order, 187 FERC ¶ 61,193 at P 48.

<sup>37</sup> *Id.* (citing *Hecate Energy Greene Cnty. 3 LLC v. FERC*, 72 F.4th 1307, 1314 (D.C. Cir. 2023) (*Hecate*)).

BPM provision.<sup>38</sup> Specifically, the Commission cited Tariff section 40.4.4 and stated that “the Tariff thus enshrines the principle that a generating resource must meet certain requirements and undergo annual testing to retain its net qualifying capacity (i.e., remain capable of operating at its rated deliverability level for the purpose of retaining deliverability).”<sup>39</sup>

11. The Commission also found that Saavi’s reliance on CAISO’s disconnection letters was misplaced.<sup>40</sup> The Commission stated that “[n]othing in these letters implies that Saavi was exempt from otherwise applicable requirements under the Tariff.”<sup>41</sup>

12. The Commission also found that CAISO’s actions were not unduly discriminatory because, among other reasons, CAISO had applied the BPM provision’s three-year limitation to other generating units that had been ineligible to participate in the CAISO markets for more than three years.<sup>42</sup>

13. Finally, the Commission found that Unit C’s deliverability status could not be transferred to the planned BESS because that status was validly terminated.<sup>43</sup> The Commission also found that the status could not be transferred because BPM section 6.1.3.4 required that Saavi make a demonstration during the three-year period that it was actively engaged in constructing a replacement but did not do so.<sup>44</sup>

## **II. Rehearing Request**

14. Saavi raises several issues on rehearing. First, Saavi argues that the Complaint Order’s rule of reason finding was erroneous.<sup>45</sup> Saavi explains that the rule of reason requires that tariffs include practices that significantly affect rates, are realistically susceptible of specification, and are not so generally understood as to render recitation

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

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* P 51.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* P 52.

<sup>43</sup> *Id.* P 53.

<sup>44</sup> *Id.* P 54.

<sup>45</sup> Rehearing Request at 9.

superfluous.<sup>46</sup> Saavi contends that the BPM provision significantly affects rates because deliverability status is critical for interconnection customers to market their planned generating units as it affects their eligibility to qualify as resource adequacy resources.<sup>47</sup> Saavi argues that the BPM provision was the “type of requirement” that is “realistically susceptible of specification.”<sup>48</sup>

15. Saavi also argues the BPM provision is not “clearly implied” by the Tariff.<sup>49</sup> Saavi contends that Tariff section 40.4.4 exclusively relates to annual awards of Net Qualifying Capacity.<sup>50</sup> Saavi maintains that the Tariff did not “suggest a deadline for permanent loss of [Full Capacity Deliverability Status], only annual reductions of [Net Qualifying Capacity].”<sup>51</sup> Saavi also argues that the fact that annual Net Qualifying Capacity reductions are provided for in the Tariff suggests any process for deliverability status revocation should also be in the Tariff.<sup>52</sup> Saavi further alleges that section 40.4.4 is subject to the results of a CAISO testing program that CAISO has never implemented and that is unlikely to be the basis for deliverability status revocation.<sup>53</sup> Saavi asserts that because CAISO relied on the BPM in violation of the rule of reason, Saavi lacked notice of the important revocation practice at issue.<sup>54</sup>

16. Second, Saavi argues that the Commission misinterpreted the BPM and the Tariff in finding that CAISO had not violated either.<sup>55</sup> Saavi argues that under the BPM and Tariff, Unit C was “capable of operating” because it was in fact “operating” while connected to

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 10.

<sup>48</sup> *Id.* at 3 (internal quotation marks omitted).

<sup>49</sup> *Id.* at 10-12.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 16-17.

<sup>54</sup> *Id.* at 12.

<sup>55</sup> *Id.* at 13-17.

CFE in Mexico.<sup>56</sup> Third, Saavi argues that the Commission misinterpreted the PGA, which Saavi argues allowed Unit C to connect to CFE without its deliverability status being terminated.<sup>57</sup> Fourth, Saavi argues that revocation of Unit C's status causes "significant and material harm to Saavi" while not furthering relevant policy goals because Saavi's position "would not lead to stranded deliverability" or undermine resource adequacy due to "interim deliverability options."<sup>58</sup> Fifth, Saavi argues that CAISO's communications misleadingly implied that Unit C's connection to CFE did not jeopardize Unit C's deliverability status.<sup>59</sup>

17. As to relief, Saavi requests that the Commission either direct CAISO to reinstate the deliverability status or "order alternative relief that would reduce the economic harm inflicted on Saavi as a result of CAISO's unauthorized termination."<sup>60</sup>

### **III. Discussion**

18. We set aside, in part, the Complaint Order. As explained below, we set aside the Complaint Order's rule of reason finding and find that, for CAISO to apply the BPM provision to terminate deliverability status, the rule of reason requires that such a practice be in the Tariff. We sustain, nevertheless, the Complaint Order's denial of Saavi's requested remedy to reinstate Unit C's deliverability status.

#### **A. Rule of Reason**

19. The rule of reason requires that tariffs include practices that "affect rates and service significantly," "are realistically susceptible of specification," and "are not so generally understood in any contractual arrangement as to render recitation superfluous."<sup>61</sup> The Commission has broad discretion in applying the rule of reason.<sup>62</sup> The D.C. Circuit's

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<sup>56</sup> *Id.* at 4, 14.

<sup>57</sup> *Id.* at 2, 7, 15-16.

<sup>58</sup> *Id.* at 4-5, 7, 17-18.

<sup>59</sup> *Id.* at 3.

<sup>60</sup> *Id.* at 18; *see also id.* at 6.

<sup>61</sup> *City of Cleveland*, 773 F.2d at 1376.

<sup>62</sup> *Hecate*, 72 F.4th at 1312, 1314 ("The Federal Power Act's 'amorphous,' requirement that tariffs include 'practices affecting rates' means that FERC has 'broad discretion' in giving the Act 'concrete application.'" (quoting *City of Cleveland*, 773 F.2d



recent *Hecate* decision clarified that even a specifiable practice significantly affecting rates need not be included expressly in a tariff if its express terms “clearly impl[y]” the practice.<sup>63</sup> In the Complaint Order, the Commission found that the Tariff clearly implied the BPM provision and the BPM provision thus did not need to be expressly included in the Tariff under the rule of reason.<sup>64</sup> On rehearing, Saavi argues that this finding was erroneous.<sup>65</sup> Upon further consideration, we now set aside the rule of reason finding in the Complaint Order. As discussed below, we find that the BPM provision is appropriately included in the Tariff pursuant to the rule of reason because it affects rates significantly, is realistically susceptible of specification, is not so generally understood in any contractual arrangement as to render recitation superfluous, and is not clearly implied by the existing Tariff.

20. We find that the BPM provision “significantly affects rates” in the manner contemplated by the rule of reason.<sup>66</sup> Within CAISO, deliverability status has a direct effect on the resource adequacy provisions throughout CAISO’s Tariff.<sup>67</sup> The provision in BPM section 6.1.3.4 for revoking that status thus has a significant effect on rates.<sup>68</sup> We also find that the provision in BPM section 6.1.3.4 is “realistically susceptible of specification” in the Tariff.<sup>69</sup> The provision in BPM section 6.1.3.4 states concisely that if “a Generating Unit becomes incapable of operating” “for any consecutive three-year period,” then “the Generating Unit will lose its deliverability priority.”<sup>70</sup> Finally, we find

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at 1376)).

<sup>63</sup> *Id.* at 1314.

<sup>64</sup> Complaint Order, 187 FERC ¶ 61,193 at P 48.

<sup>65</sup> Rehearing Request at 6.

<sup>66</sup> *Hecate*, 72 F.4th at 1314.

<sup>67</sup> See CAISO, CAISO eTariff, app. A (Definitions), Full Capacity Deliverability Status (1.0.0); *id.* Net Qualifying Capacity (0.0.0); *id.* Qualifying Capacity (1.0.0).

<sup>68</sup> See *ISO New Eng. Inc.*, 187 FERC ¶ 61,100, at P 36 (2024) (finding that certain submetering requirements significantly affect the terms of participation of aggregations in markets because they could result in some aggregators being “unable to provide regulation service” and thus significantly affect “participation in ISO-NE’s ancillary services markets”).

<sup>69</sup> *City of Cleveland*, 773 F.2d at 1376.

<sup>70</sup> CAISO, BPM for Reliability Requirements, § 6.1.3.4.

that the provision in BPM section 6.1.3.4 is not “so generally understood in any contractual arrangement” so as to make inclusion superfluous.<sup>71</sup>

21. After further consideration, we find that the Tariff does not “clearly imply” the BPM provision under *Hecate*.<sup>72</sup> Tariff section 40.4.4 states that CAISO “can” “reduce[]” a generating unit’s capacity “for purposes of the Net Qualifying Capacity annual report” “for the next Resource Adequacy Compliance Year, if a CAISO testing program determines that it is not capable of supplying” the full amount.<sup>73</sup> In short, CAISO can reduce a unit’s annual capacity for the next year if a testing program finds it incapable of supplying its maximum capacity.<sup>74</sup> The provision in BPM section 6.1.3.4 instead requires CAISO to permanently revoke Full Capacity Deliverability Status if a generating unit is incapable of operating for a consecutive three-year period.<sup>75</sup>

22. The fact that Tariff section 40.4.4 allows annual reassessment of Net Qualifying Capacity in “the Net Qualifying Capacity annual report” does not clearly imply the practice contemplated in BPM section 6.1.3.4 under which CAISO must permanently revoke capacity eligibility (i.e., deliverability status) due to incapability. In other words, the existence of Tariff criteria allowing annual, temporary modifications to Net Qualifying Capacity values does not clearly imply that those criteria apply to mandate permanent limits on an ongoing capacity eligibility status. Further, two other differences between the Tariff section and the provision in BPM section 6.1.3.4 bolster our finding here that the former does not clearly imply the latter. First, the Tariff section—entitled “40.4.4 Reductions for Testing”—only expressly contemplates that capacity can be “reduced,” while the provision in BPM section 6.1.3.4 contemplates terminating status. Second, the Tariff provision only applies when “a CAISO testing program” determines incapability, though the provision in BPM section 6.1.3.4 has no similar limitation. While Tariff section 40.4.4 and the provision in BPM section 6.1.3.4 address related concepts, we find after further consideration that the Tariff does not clearly imply the BPM provision.<sup>76</sup>

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<sup>71</sup> *City of Cleveland*, 773 F.2d at 1376.

<sup>72</sup> 72 F.4th at 1314.

<sup>73</sup> CAISO, CAISO eTariff, § 40.4.4 (Reductions for Testing) (4.0.0).

<sup>74</sup> *Id.*

<sup>75</sup> CAISO, BPM for Reliability Requirements, § 6.1.3.4.

<sup>76</sup> Because we find that the BPM provision must be in the Tariff for CAISO to apply it, we need not address the issue of interpreting the BPM provision’s meaning. See Complaint Order, 187 FERC ¶ 61,193 at PP 42-45, 47; Rehearing Request at 4, 13-17.

## B. Remedy

23. On rehearing, Saavi repeats its request that the Commission direct CAISO to reinstate Unit C's deliverability status.<sup>77</sup> Under FPA section 309, the Commission may order remedies when it finds them "necessary or appropriate to carry out the [FPA]."<sup>78</sup> The D.C. Circuit has long held that the Commission's "discretion is often at its zenith when the challenged action relates to the fashioning of remedies."<sup>79</sup> In deciding whether

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Based on the above findings, we also set aside the prior finding that Unit C's deliverability status could not be transferred to the planned BESS. Complaint Order, 187 FERC ¶ 61,193 at PP 53, 54.

<sup>77</sup> Rehearing Request at 6, 18; Complaint at 19. On rehearing, Saavi requests that the Commission either direct status reinstatement or "order alternative relief that would reduce the economic harm inflicted on Saavi" and "mitigate the result that devalues Saavi's substantial investments." Rehearing Request at 6, 18. Saavi's request for alternative relief was not previously raised in this proceeding and is thus not properly before us on rehearing, and we accordingly reject it. *NextEra Energy Seabrook, LLC v. NextEra Energy Res., LLC*, 183 FERC ¶ 61,196, at P 39 (2023); *see also Ill. Power Co.*, 73 FERC ¶ 61,348, at 62,058 (1995); *Transmission Agency of N. Cal. v. Pac. Gas & Elec. Co.*, 85 FERC ¶ 61,320, at 62,257 (1998) (rejecting attempt, on rehearing, to seek an alternative form of relief from that originally sought in complaint). The Commission looks with disfavor on parties raising arguments for the first time on rehearing that could have been raised earlier because other parties are not permitted to respond to requests for rehearing and it disrupts the administrative process by moving the target for parties seeking a final decision. *NextEra Energy Seabrook, LLC*, 183 FERC ¶ 61,196 at P 39. In any event, Saavi provided no information with which the Commission could evaluate such a request or craft such relief. *See* Rehearing Request at 6, 18. The Commission's practice, with which courts have agreed, is to reject issues raised on rehearing without sufficient specificity. *E.g., ZEP Grand Prairie Wind, LLC*, 183 FERC ¶ 61,150, at P 10 (2023); *Ind. Util. Regul. Comm'n v. FERC*, 668 F.3d 735, 736 (D.C. Cir. 2012).

<sup>78</sup> 16 U.S.C. § 825h; *see also Towns of Concord, Norwood, & Wellesley v. FERC*, 955 F.2d 67, 72-73, 76 (D.C. Cir. 1992). Section 309 allows the Commission "to advance remedies ... as long as they are consistent with the [FPA]." *Verso Corp. v. FERC*, 898 F.3d 1, 10 (D.C. Cir. 2018).

<sup>79</sup> *Pub. Utils. Comm'n of Cal. v. FERC*, 988 F.2d 154, 163 (D.C. Cir. 1993) (internal quotation marks omitted); *Midwest Indep. Transmission Sys. Operator, Inc.*, 162 FERC ¶ 61,173, at P 18 (2018).

to grant a remedy, the Commission must balance the relevant competing equities.<sup>80</sup> In approaching this “difficult problem of balancing competing equities,” “the Commission must show that it considered relevant factors and struck a reasonable accommodation among them, and that its order granting or denying [a remedy] was equitable in the circumstances.”<sup>81</sup>

24. Several considerations weigh against granting Saavi’s requested remedy. First, reinstating Unit C’s deliverability status could negatively affect reliability. CAISO provided a declaration by Robert Sparks, Senior Manager for Regional Transmission – South.<sup>82</sup> Mr. Sparks stated that if CAISO were to reinstate Unit C’s deliverability status, “then approximately 40 generating units behind the East of Miguel Area Constraint would be impacted by [Net Qualifying Capacity] MW reductions” and “[t]he total curtailment would be the equivalent of the 181 MW added by Unit C,”<sup>83</sup> notwithstanding that Unit C remains disconnected from CAISO. The Net Qualifying Capacity reductions would thus reduce the amount of resource adequacy capacity those units could provide to load-serving entities and their customers.<sup>84</sup> CAISO stated that “[s]tranded or unavailable deliverability would result in load-serving entities being unable to meet their [resource adequacy] obligations—jeopardizing reliability.”<sup>85</sup>

25. We are unpersuaded by Saavi’s responses on this issue. Saavi argued that CAISO “never provided any support” for the fact that total curtailment would be equivalent to the 181 MW added by Unit C.<sup>86</sup> In fact, CAISO provided the Sparks declaration, which we find logical and credible. Saavi speculated that “CAISO could provide interim deliverability allocations to the generators that would lose a small portion of their deliverability as a result of an equitable claw back.”<sup>87</sup> But Saavi provided no citation or explanation for how such

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<sup>80</sup> *La. Pub. Serv. Comm’n v. FERC*, 772 F.3d 1297, 1302 (D.C. Cir. 2014); *see also XO Energy MA, LP v. FERC*, 77 F.4th 710, 716 (D.C. Cir. 2023).

<sup>81</sup> *La. Pub. Serv. Comm’n*, 772 F.3d at 1302 (internal quotation marks omitted).

<sup>82</sup> CAISO April 9, 2024 Answer, Decl. PP 1-2.

<sup>83</sup> *Id.* P 13.

<sup>84</sup> *Id.* P 9; *see also* CAISO, CAISO eTariff, app. A (Definitions), Net Qualifying Capacity (0.0.0); *id.* Qualifying Capacity (1.0.0).

<sup>85</sup> CAISO April 9, 2024 Answer at 5.

<sup>86</sup> Saavi May 21, 2024 Answer at 7.

<sup>87</sup> Saavi April 24, 2024 Answer at 10.

“interim deliverability allocations” would be conducted under the CAISO Tariff or BPM. Nor did Saavi support the notion that any such “interim deliverability” would even be available or, if it were, that it would prevent Net Qualifying Capacity reductions pursuant to the CAISO Tariff or BPM.<sup>88</sup> Further, if CAISO reinstated Unit C’s deliverability status, it appears that Unit C would not use that status to provide resource adequacy.<sup>89</sup> Instead, Saavi states that it intends to transfer the deliverability status to its planned BESS, which will not achieve commercial operation until the third quarter of 2027.<sup>90</sup> In short, about 40 generating units would face reductions in the amount of resource adequacy they can provide—equivalent to Unit C’s 181 MW—while Saavi would not use the reinstated status to provide resource adequacy until at least 2027. We find that these reliability ramifications alone outweigh any potential harms to Saavi, as discussed further below.

26. Second, Saavi’s proposed remedy would harm the generating units that face Net Qualifying Capacity reductions. These generating units are blameless, bona fide recipients of deliverability status, and they have made significant investment decisions in pursuit of, and reliance on, their highly valuable deliverability status.<sup>91</sup>

27. Third, Saavi’s proposed remedy could increase regulatory uncertainty going forward.<sup>92</sup> Investors may be less likely to invest capital if deliverability status allocations

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<sup>88</sup> CAISO May 6, 2024 Answer at 5.

<sup>89</sup> Complaint at 12 (stating “[h]ad Saavi been on notice” Unit C “could have [been] reconnected to CAISO for a time in order to avoid being disconnected from CAISO for three consecutive years” and thus implying Saavi does not intend to reconnect Unit C for more than a temporary period). Saavi did not allege that Unit C would use the deliverability status to provide resource adequacy.

<sup>90</sup> *Id.* at 7-8, 12. Even if Saavi intends to use deliverability status for Unit C, that use would still cause harms discussed in this section, such as other resources facing Net Qualifying Capacity reductions, increasing regulatory uncertainty, and the effects of Saavi’s prejudicial delay. Solely for purposes of this remedy discussion, we assume without deciding that Saavi has the potential to transfer Unit C’s deliverability status.

<sup>91</sup> See *Investigation of Wholesale Rates of Pub. Util. Sellers of Energy & Ancillary Servs. in the W. Mkt. Sys. Coordinating Council*, 135 FERC ¶ 61,176, at PP 41-43 (2011) (considering reliance in the balance of equities when fashioning a remedy); see also Saavi May 21, 2024 Answer at 8-9 (acknowledging that “other generating units” “may take ... actions (e.g., executing power purchase agreements) relying on their current deliverability awards”).

<sup>92</sup> *N.Y. Indep. Sys. Operator, Inc.*, 92 FERC ¶ 61,073, at 61,307 (2000) (denying remedy that “would create substantial uncertainty ... and would undermine confidence”).

were subject to future changes due to legal error. This uncertainty could undermine investor confidence as they approach decisions about investing in generating units that could provide resource adequacy.

28. Finally, Saavi learned of the revocation in October 2022 but has not provided a justification for delaying until March 20, 2024 to file the Complaint.<sup>93</sup> During this time, as discussed above, other resources acted in reliance on their deliverability status allocations.<sup>94</sup> Indeed, Saavi acknowledged that reinstating Unit C's status "could inflict ... prejudice on other generating units receiving allocations that may have to be clawed back, as they may take further actions (e.g., executing power purchase agreements) relying on their current deliverability awards."<sup>95</sup>

29. Saavi raises two additional considerations in favor of its requested remedy. First, Saavi argues it was incorrectly deprived of its legitimately earned and valuable deliverability status. As discussed above, Saavi has not indicated it intends to in fact use that deliverability status for Unit C<sup>96</sup> and states it aims to transfer the status to the BESS it is developing, which will not achieve commercial operation until the third quarter of 2027.<sup>97</sup>

30. Second, on the issue of reliance, Saavi argues that CAISO's disconnection extension letters implied Unit C retained status after the revocation occurred.<sup>98</sup> Specifically, CAISO's letter cited by Saavi stated "during the time period it is connected to CFE, the [Unit C] will no longer be available or eligible to meet Resource Adequacy requirements."<sup>99</sup> Saavi asserts that because CAISO stated that Unit C would be ineligible to meet resource adequacy requirements while disconnected, CAISO necessarily implied that if Unit C reconnected it would become eligible.<sup>100</sup> We disagree with Saavi's interpretation of CAISO's letter, which did not address reconnection. By stating that

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<sup>93</sup> Complaint at 8, 20.

<sup>94</sup> *See Investigation of Wholesale Rates of Pub. Util. Sellers of Energy & Ancillary Servs. in the W. Mkt. Sys. Coordinating Council*, 135 FERC ¶ 61,176 at PP 41-43.

<sup>95</sup> Saavi May 21, 2024 Answer at 8-9.

<sup>96</sup> *See* Complaint at 12.

<sup>97</sup> *Id.* at 7-8, 12.

<sup>98</sup> Rehearing Request at 3.

<sup>99</sup> Complaint, Ex. C at 1.

<sup>100</sup> *See* Rehearing Request at 3.

disconnection caused ineligibility, CAISO did not logically imply that reconnection necessarily results in eligibility; CAISO's letter was silent on the subject.<sup>101</sup>

31. In considering and weighing the equities, we find that—on balance—the most reasonable decision is to decline to grant Saavi's requested remedy of status reinstatement. As a general matter, we find that the considerations that favor denying the requested remedy outweigh those that do not. We particularly emphasize that, if we were to grant the remedy, it appears that Saavi would not use the deliverability status until at least 2027, while there would be negative effects on reliability and for other generating units, as described above.

The Commission orders:

In response to Saavi's request for rehearing, the Complaint Order is hereby modified and set aside, in part, as discussed in the body of this order.

By the Commission.

( S E A L )

Carlos D. Clay,  
Deputy Secretary.

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<sup>101</sup> In the Complaint, Saavi alleged that CAISO's revocation of Unit C's deliverability status violated the PGA. Complaint at 9-10. We continue to find that CAISO did not violate the PGA. Complaint Order, 187 FERC ¶ 61,193 at P 46. Although the PGA provides an option for Unit C to disconnect from and reconnect to the CAISO grid, *see* PGA § 4.1.1, it does not govern what the consequences of those actions would be on Full Capacity Deliverability Status. In any event, even if we found that CAISO had violated the PGA, our remedy determination would be unchanged.