

195 FERC ¶ 61,181
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Laura V. Swett, Chairman;
David Rosner, Lindsay S. See,
and David LaCerte.

DCR Transmission, L.L.C.

Docket Nos. ER23-2309-003
ER24-1394-003
EL26-34-001
(consolidated)

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued June 4, 2026)

1. On June 20, 2025, acting pursuant to Rule 715(d) of the Commission's Rules of Practice and Procedure,¹ the Commission granted interlocutory appeal, finding that DCR Transmission, L.L.C.'s (DCRT) proposed Transmission Owner Tariff (TO Tariff) and annual Base Transmission Revenue Requirement (TRR) (together, Tariff Records) for the Ten West Link transmission project (Project) are not an initial rate.² On January 30, 2026, the Commission issued an order addressing arguments DCRT raised on rehearing, setting aside the Interlocutory Appeal Order in its entirety, finding that DCRT's Tariff Records are an initial rate, instituting proceedings under section 206 of the Federal Power Act (FPA),³ and consolidating proceedings.⁴ The California Department of Water Resources State Water Project, the California Public Utilities Commission, the cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, and the Northern California Power Agency (collectively, Transmission Customers), California Independent System Operator Corporation (CAISO), and the Electricity Transmission Competition Coalition (ETCC) filed timely requests for rehearing of the Rehearing Order.

¹ 18 C.F.R. § 385.715(d) (2025).

² *DCR Transmission, L.L.C.*, 191 FERC ¶ 61,212 (2025) (Interlocutory Appeal Order).

³ 16 U.S.C. § 824e.

⁴ *DCR Transmission, L.L.C.*, 194 FERC ¶ 61,085 (2026) (Rehearing Order).

2. Pursuant to *Allegheny Defense Project v. FERC*,⁵ the rehearing requests filed in this proceeding may be deemed denied by operation of law. However, as permitted by FPA section 313(a),⁶ we are modifying the discussion in the Rehearing Order and continue to reach the same result in this proceeding, as discussed below.⁷

I. Background

A. Filing of Tariff Records

3. On June 30, 2023, as supplemented on July 3, 2023, and August 18, 2023, pursuant to section 205 of the FPA⁸ and section 35.12 of the Commission's regulations,⁹ DCRT submitted its proposed Tariff Records for the Project in Docket No. ER23-2309-000.

4. On September 29, 2023, the Commission issued an order accepting and suspending DCRT's Tariff Records, to become effective March 8, 2024, subject to refund.¹⁰ Based on the Commission's preliminary analysis, the Commission concluded that the Tariff Records may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful and raise issues of material fact that could not be resolved based on the record and are more appropriately addressed in hearing and settlement judge procedures.¹¹ The Commission directed a hearing concerning the justness and reasonableness of DCRT's Tariff Records, "[p]ursuant to the authority contained in and subject to the jurisdiction conferred on the Commission by section

⁵ 964 F.3d 1 (D.C. Cir. 2020) (en banc).

⁶ 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.").

⁷ *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the Rehearing Order. See *Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

⁸ 16 U.S.C. § 824d.

⁹ 18 C.F.R. § 35.12 (2025).

¹⁰ *DCR Transmission, L.L.C.*, 184 FERC ¶ 61,199 (2023) (Hearing Order).

¹¹ *Id.* P 40.

402(a) of the Department of Energy Organization Act and the FPA, particularly sections 205 and 206 thereof.”¹² The Commission did not discuss whether the DCRT Tariff Records constitute an initial rate or change of rate. Neither DCRT nor any other party sought rehearing or clarification of the Hearing Order.

5. On March 4, 2024, DCRT submitted identical Tariff Records in Docket No. ER24-1394-000 and requested to change the effective date of its Tariff Records from March 8, 2024 to an indefinite date. On May 2, 2024, the Commission issued an order accepting and suspending the resubmitted Tariff Records, subject to refund and the outcome of hearing and settlement judge procedures, and granting DCRT’s request to change the effective date.¹³ The Commission also consolidated Docket No. ER24-1394-000 with Docket No. ER23-2309-000.¹⁴ The Commission noted that DCRT’s filings “reflect the same rates, terms, and conditions of those the Commission accepted and suspended, subject to refund” in its Hearing Order.¹⁵ Neither DCRT nor any other party sought rehearing or clarification of the Consolidation Order.

B. Interlocutory Appeal Order

6. In the first pre-hearing conference, the Presiding Judge raised the issue of the appropriate statutory designation and assignment of burden of proof for this hearing.¹⁶ The Presiding Judge asked for briefs and scheduled oral argument centering on two questions: (1) whether DCRT’s Tariff Records were an initial rate and (2) whether there was any authority to treat an initial rate filing as if it were a rate change filing under FPA section 205(e). Several participants submitted briefs, including DCRT, CAISO, Transmission Customers, ETCC,¹⁷ and Commission Trial Staff (Trial Staff).

¹² *Id.* at ordering para. (B).

¹³ *DCR Transmission, L.L.C.*, 187 FERC ¶ 61,057 (2024) (Consolidation Order). In the Consolidation Order, the Commission directed DCRT to submit an informational filing notifying the Commission of the actual effective date within 30 days of the actual effective date. *Id.* P 12. On June 6, 2024, DCRT submitted an informational filing notifying the Commission that the actual effective date of the Tariff Records would be June 12, 2024.

¹⁴ *Id.* P 11.

¹⁵ *Id.* P 12.

¹⁶ *DCR Transmission, L.L.C.*, 191 FERC ¶ 63,022, at P 8 (2025) (Order Permitting Interlocutory Appeal).

¹⁷ CAISO, Transmission Customers, and ETCC are referred to herein, collectively,

7. The Presiding Judge held oral argument on May 21, 2025. At the conclusion of oral argument, the Presiding Judge ruled that: (1) DCRT's Tariff Records were an initial rate and (2) according to FPA section 206, the burden of proof fell on Trial Staff and those parties challenging DCRT's Tariff Records.¹⁸ Trial Staff and Intervenors each made oral motions for interlocutory appeal pursuant to Rule 715(b)(1).¹⁹ On May 22, 2025, the Presiding Judge issued the Order Permitting Interlocutory Appeal, in which the Presiding Judge confirmed his bench rulings, granted permission to take an interlocutory appeal, and presented the interlocutory appeal for Commission action pursuant to Rule 715(d).²⁰

8. On June 20, 2025, the Commission granted the interlocutory appeal and clarified that the DCRT Tariff Records should be treated as a change in rate, consistent with the Commission's acceptance and suspension of DCRT's Tariff Records, subject to refund, in the Hearing Order.²¹ The Commission found that "the fact that DCRT's Project had not achieved commercial operation at the time DCRT filed the Tariff Records is not determinative of whether DCRT's Tariff Records constitute an initial or changed rate."²² The Commission explained that "[u]pon the effective date of DCRT's Tariff Records, DCRT began providing a service to customers (that is, transmission customers in CAISO) that had already been receiving the same jurisdictional service (transmission service over the CAISO-controlled transmission system) with costs recovered through the CAISO [Access Charge]."²³ The Commission found that it was appropriate to look at the CAISO Access Charge rather than each Participating Transmission Owner's (PTO)

as Intervenors.

¹⁸ Order Permitting Interlocutory Appeal, 191 FERC ¶ 63,022 at P 10.

¹⁹ *Id.* P 29.

²⁰ *Id.* P 30.

²¹ Interlocutory Appeal Order, 191 FERC ¶ 61,212 at P 28.

²² *Id.* P 29.

²³ *Id.* P 30 & n.79 (citing DCRT, Transmission Owner Tariff (2.0.0), § 4 (Eligibility), which provides "[t]ransmission service over DCRT's Regional Transmission Facilities and Entitlements placed under the CAISO's Operational Control shall be provided only to Eligible Customers as defined by the CAISO Tariff"). The Access Charge is defined in CAISO's tariff. *See* CAISO, CAISO eTariff, § 26.1(Access Charges) (8.0.0), § 26.1(a).

individual rate to determine whether a new service is being provided to new customers.²⁴ Because CAISO's customers would neither pay a new rate nor receive a new service as a result of DCRT's Tariff Records becoming effective, the Commission held that the Tariff Records were a change in rate, consistent with Commission precedent.²⁵ DCRT filed for rehearing of the Interlocutory Appeal Order.

C. Rehearing Order

9. On January 30, 2026, the Commission issued the Rehearing Order, in which it set aside the Interlocutory Appeal Order and the Commission's determination that DCRT's Tariff Records constitute a change in rate.²⁶

10. The Commission noted that its long-standing precedent has held that "an initial rate filing is one which provides for [1] a new service [2] to a new customer, and that both the service and the customer must be new."²⁷ Thus, the Commission explained that "where the service is new, but the customer is not, such filings will be deemed to be changes in rates, as has been the Commission's practice. Where a filing provides for the extension of an existing service to a new customer, the filing will be treated as a change in rate."²⁸

11. The Commission found that, consistent with its precedent in *Trans Bay Cable LLC*, the Tariff Records are an initial rate.²⁹ The Commission acknowledged that it "ha[d] not been consistent on whether it has proceeded under section 205 or section 206 in addressing proposed TRRs for transmission projects that were not yet operational," but

²⁴ Interlocutory Appeal Order, 191 FERC ¶ 61,212 at P 30.

²⁵ *Id.* (citing *Morongo Transmission LLC*, 174 FERC ¶ 61,171 (2021); *DesertLink, LLC*, 158 FERC ¶ 62,189 (2017); *DesertLink, LLC*, 161 FERC ¶ 61,126 (2017); *GridLiance W. Transco LLC*, 160 FERC ¶ 61,003 (2017); *GridLiance W. Transco LLC*, 158 FERC ¶ 62,136 (2017); *NextEra Energy Transmission W., LLC*, 154 FERC ¶ 61,009 (2016); *TransCanyon DCR, LLC*, 152 FERC ¶ 61,017 (2015); *MidAm. Transco Cent. Cal. Transco, LLC*, 147 FERC ¶ 61,179 (2014); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,306 (2008)).

²⁶ Rehearing Order, 194 FERC ¶ 61,085 at P 14.

²⁷ *Id.* P 15 (quoting *Sw. Elec. Power Co.*, 39 FERC ¶ 61,099, at 61,293 (1987)).

²⁸ *Id.* (quoting *Sw. Elec. Power Co.*, 39 FERC 61,293).

²⁹ *Id.* PP 16-17 (citing *Trans Bay Cable LLC*, 129 FERC ¶ 61,225, at PP 1-2, 10 (2009), *order on reh'g*, 132 FERC ¶ 61,083, at PP 25, 27 (2010)).

found that, with the exception of *Trans Bay*, the Commission did not address in previous cases whether the TRR filing was an initial or changed rate.³⁰ The Commission found that as DCRT's Project was not operational when DCRT submitted its Tariff Records, it could not have been offering an existing service nor could it have served existing customers.³¹

12. The Commission initiated a section 206 proceeding in Docket No. EL26-34-000, which it then consolidated with Docket Nos. ER23-2309 and ER24-1394 for purposes of hearing.³² The Commission invoked its FPA section 309 "authority to remedy its errors and correct unjust situations,"³³ weighed the equities, and set the refund effective date in the consolidated proceedings for June 12, 2024—the same as the effective date of the Tariff Records.³⁴

II. Discussion

A. Procedural Matters

13. On March 17, 2026, DCRT filed a motion for leave to answer and answer in response to the rehearing requests. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure³⁵ prohibits an answer to a request for rehearing. Accordingly, we deny DCRT's motion to answer the rehearing requests and reject the answer.

B. Finality of the Hearing Order

1. Rehearing Requests

14. CAISO, Transmission Customers, and ETCC argue that the Hearing Order was a final Commission order treating DCRT's Tariff Records as a change in rate that is non-

³⁰ *Id.* P 17 (citing *NextEra Energy Transmission W., LLC*, 154 FERC ¶ 61,009 at P 1; *Valley Link Transmission Md., LLC*, 191 FERC ¶ 61,113, at PP 2, 44 (2025)).

³¹ *Id.* (citing Hearing Order, 184 FERC ¶ 61,199 at P 2; Consolidation Order, 187 FERC ¶ 61,057 at P 4).

³² *Id.* PP 18-19.

³³ *Id.* P 20 (quoting *TNA Merch. Projects, Inc. v. FERC*, 857 F.3d 354, 359 (D.C. Cir. 2017); citing *Chehalis Power Generating, L.P.*, 171 FERC ¶ 61,188, at P 44 (2020)).

³⁴ *Id.* (citing *Trans Bay*, 132 FERC ¶ 61,083 at P 28; *Citizens Sunrise Transmission LLC*, 138 FERC ¶ 61,129 at P 38 (2012)).

³⁵ 18 C.F.R. § 385.713(d)(1) (2025).

appealable and not subject to reexamination.³⁶ Each relies on FPA section 313(a), which provides that parties aggrieved by a Commission order may seek rehearing within 30 days of the order's issuance.³⁷ Intervenors argue that because no rehearing request was filed as to the Hearing Order in that period, the Rehearing Order amounts to an impermissible reexamination of the issues decided in the Hearing Order.³⁸ In support, each of the Intervenors also cites the Commission's statement in the Interlocutory Appeal Order that the time for rehearing of any argument that the Commission erred in the Hearing Order has passed, such that the Hearing Order is final as to whether DCRT's Tariff Records constitute an initial or changed rate.³⁹

15. CAISO further asserts that the Hearing Order reflects that the Commission treated DCRT's Tariff Records as a change in rate. In particular, CAISO contends that if the Commission had intended to find in the Hearing Order that DCRT's filing was an initial rate, the Commission was required to initiate a proceeding under FPA section 206, which the Commission did not do.⁴⁰ By contrast, CAISO states that where the Commission has elsewhere determined that submissions are initial rate filings, and established 206 proceedings, it has done so explicitly.⁴¹ And CAISO argues that the Commission in

³⁶ See CAISO Rehearing Request at 2-3, 23-38 (arguing that the Commission improperly set aside findings in the rehearing order and lacks authority to modify the Hearing Order); Transmission Customers Rehearing Request at 2, 5-9; ETCC Rehearing Request at 1-2, 4, 7-8, 10-19.

³⁷ 16 U.S.C. § 825l(a).

³⁸ See CAISO Rehearing Request at 21-22, 31-35; Transmission Customers Rehearing Request at 2, 5-9; ETCC Rehearing Request at 2, 4-5, 7-8, 18-19.

³⁹ See CAISO Rehearing Request at 33 (quoting Interlocutory Appeal Order, 191 FERC ¶ 61,212 at P 28); Transmission Customers Rehearing Request at 5-6, 9 (arguing that the Commission changed its position on the finality of the Hearing Order without explanation); ETCC Rehearing Request at 15-17; *see also* CAISO Rehearing Request at 31-32 (arguing that the Rehearing Order did not overturn the Interlocutory Appeal Order in this respect); ETCC Rehearing Request at 18 ("The Rehearing Order does not, however, acknowledge the clear finding in the Interlocutory Appeal Order that the Hearing Order was final and not subject to revision.").

⁴⁰ See CAISO Rehearing Request at 24-26 (arguing that the Commission took none of the steps required to initiate a proceeding under FPA section 206 and the only reference to section 206 occurs in boilerplate in the ordering paragraph).

⁴¹ See *id.* at 27-29 (collecting cases and arguing, for example, that in one case the Commission issued an errata notice to correct the ordering paragraph to state that the

certain statements recognized that DCRT bore the burden of proof to demonstrate that its proposed rate was just and reasonable, further reinforcing the conclusion that the Commission treated DCRT's Tariff Records as a change in rate.⁴² CAISO contends that it was error for the Commission to ignore this evidence that it treated DCRT's filing as a change in rate, and that the Commission improperly set aside those findings.⁴³

16. ETCC also argues that DCRT itself treated its filing as a change in rate, as to which DCRT bore the burden of proof.⁴⁴ ETCC faults DCRT for reversing course on this issue when it was raised by the Presiding Judge, despite failing to submit a request for rehearing of the Hearing Order.⁴⁵ According to ETCC, the Presiding Judge reopened this closed matter for relitigation despite the objections of multiple parties and the statutory prohibition on doing so.⁴⁶ ETCC further states that the Commission, in the Interlocutory Appeal Order, correctly declined to revisit the Hearing Order, instead finding that order was a final determination that DCRT's filing was a changed rate.⁴⁷

17. CAISO also argues that although there is a narrow exception for ministerial or clerical errors to the statutory restriction preventing the Commission from modifying a

proceeding was initiated pursuant to FPA sections 205 and 206).

⁴² *See id.* at 29.

⁴³ *See id.* at 23, 31.

⁴⁴ *See* ETCC Rehearing Request at 12-14 (discussing the procedural schedule and DCRT's submission of direct and rebuttal testimony); *cf.* CAISO Rehearing Request at 29-31 (noting that DCRT had invoked both sections 35.12 and 35.13 of the Commission's regulations, 18 C.F.R. §§ 35.12, 35.13 (2025), but did not seek waiver of provisions of section 35.12 (governing initial rate filings) whereas it did so as to section 35.13 (governing change in rate filings), and that the Commission never found that section 35.12 applied).

⁴⁵ ETCC Rehearing Request at 13-14 (arguing that, even then, DCRT conceded that the Hearing Order did not expressly indicate that the Commission was opening a proceeding under FPA section 206 and was on clear notice that this was not a FPA section 206 proceeding).

⁴⁶ *See id.* at 14-15; *see also* CAISO Rehearing Request at 40.

⁴⁷ ETCC Rehearing Request at 4, 15-17 (noting also that DCRT did not specifically seek rehearing on whether the Hearing Order was final); *see also id.* at 17-18 (arguing that the Rehearing Order acknowledged that the Interlocutory Appeal Order was not inconsistent with the Hearing Order).

final order, this exception does not apply here.⁴⁸ And CAISO further states that the Commission cannot circumvent this statutory restriction by invoking its authority under FPA section 309.⁴⁹ Furthermore, it asserts that DCRT's failure to seek rehearing of the Hearing Order warrants the application of "equitable principles underlying the doctrine of laches" to preclude DCRT from reaping the benefits of the Rehearing Order.⁵⁰ Finally, CAISO and Transmission Customers argue that this case is not comparable to *Chehalis* or *Trans Bay*, in which rehearing was timely sought.⁵¹

2. Commission Determination

18. We sustain the Rehearing Order's determination to reverse the Commission's decision on interlocutory appeal, and find that DCRT's proposed rate is an initial rate. The Commission acted well within its authority by addressing claims of error in the Interlocutory Appeal Order and efficiently resolving interlocutory matters important to the conduct of the ongoing hearing procedures. In claiming that DCRT's failure to seek rehearing of the Hearing Order is fatal to DCRT's argument that the proposed rate is an initial rate, Intervenor all assert that the Hearing Order was final and is now non-appealable.⁵² We recognize that the Interlocutory Appeal Order stated the Hearing Order was final as to the question of whether DCRT's Tariff Records constitute an initial or changed rate. However, the Rehearing Order set aside the Interlocutory Appeal Order in its entirety and we explain in more detail below our conclusion that the Hearing Order was nonfinal.

19. Rule 713(b) of the Commission's Rules of Practice and Procedure permits requests for rehearing "of any final decision or other final order in a proceeding."⁵³ "A final order is one that imposes an obligation, denies a right, or fixes some legal

⁴⁸ CAISO Rehearing Request at 35-36.

⁴⁹ *See id.* at 36-37.

⁵⁰ *Id.* at 37-38 (arguing that DCRT slept on its rights and that the other parties and ratepayers are prejudiced by the Rehearing Order).

⁵¹ *See id.* at 54-55; Transmission Customers Rehearing Request at 7-8.

⁵² *See supra* PP 14-16.

⁵³ 18 C.F.R. §§ 385.713(b) (timeliness), (c) (contents of a rehearing request); *see also Algonquin Gas Transmission, LLC.*, 175 FERC ¶ 61,150, at P 4 (2021); 16 U.S.C. § 825l(a) (parties "aggrieved by an order issued by the Commission in a proceeding . . . may apply for a rehearing within thirty days after the issuance of such order").

relationship as a consummation of the administrative process.”⁵⁴ Under longstanding precedent, the Commission and courts have routinely found that orders setting a matter for hearing and settlement judge procedures are not final orders subject to rehearing.⁵⁵ Rather, such orders are procedural steps reflecting the initiation of proceedings before the presiding judge, not the consummation of the administrative process.⁵⁶

20. That is the case here: the Hearing Order reflected the initiation of the proceedings before the Presiding Judge. Only at the conclusion of those proceedings, and after any subsequent Commission review, will a final order issue addressing whether the Tariff Records are unjust, unreasonable, unduly discriminatory or preferential.⁵⁷ The substance of that ultimate decision may affect whether there is any need for Intervenors to seek judicial review, as well as the issues that may arise for potential judicial review.⁵⁸

⁵⁴ *La. Pub. Serv. Comm’n*, 182 FERC ¶ 61,080, at P 6 (2023); *see also Reliable Automatic Sprinkler Co. v. Consumer Prod. Safety Comm’n*, 324 F.3d 726, 731 (D.C. Cir. 2003) (“Final agency action ‘mark[s] the consummation of the agency’s decisionmaking process’ and is ‘one by which rights or obligations have been determined, or from which legal consequences will flow.’”) (quoting *Bennett v. Spear*, 520 U.S. 154, 178 (1997)).

⁵⁵ *See La. Pub. Serv. Comm’n*, 182 FERC ¶ 61,080, at P 6 & nn.20, 22 (citing cases); *see also Papago Tribal Util. Auth. v. FERC*, 628 F.2d 235, 239 (D.C. Cir. 1980) (“Acceptance of a filing, coupled with scheduling of a hearing, is the initiation of an administrative proceeding; judicial review properly follows the conclusion of the proceeding.”). CAISO elsewhere cites one case in which the Commission stated that a failure to seek rehearing of an order setting a matter for investigation resulted in a waiver to the ability to challenge whether there was sufficient evidence to warrant a hearing. *See* CAISO Rehearing Request at 40-41 (citing *Epsilon Trading, LLC v. Colonial Pipeline Co.*, 185 FERC ¶ 61,126, at PP 370, 374, 375 n.952 (2023) (*Epsilon*)). That is a materially different set of circumstances than presented here. In any event, *Epsilon* addressed the merits of the arguments presented. *See id.* PP 374, 376-381.

⁵⁶ *See, e.g., La. Pub. Serv. Comm’n*, 182 FERC ¶ 61,080 at P 6.

⁵⁷ *Nasdaq Stock Mkt. LLC v. SEC*, 1 F.4th 34, 39 (D.C. Cir. 2021) (“[F]inality must be measured in relation to the agency’s entire process, not just one phase of the process.” (quotation marks omitted)); *Papago Tribal Util. Auth.*, 628 F.2d at 239 (“The quintessential reviewable order under the Act is a final determination by the Commission concerning the justness and reasonableness of the rate filing.”).

⁵⁸ *FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 244 n.11 (1980) (*Standard Oil*) (“[T]hat Socal’s challenge may be mooted in adjudication warrants the requirement that Socal pursue adjudication, not shortcut it.”); *Rochester Tel. Corp. v. United States*, 307 U.S. 125, 130 (1939) (explaining that order is non-final when it “does not of itself

21. Furthermore, examination of the Hearing Order confirms that it did not impose an obligation, deny a right, or fix any legal relationship, as is also required for the Hearing Order to be a final Commission order.⁵⁹ Applying the fact-specific approach required in a finality inquiry,⁶⁰ we find that because the Hearing Order imposed a nominal suspension of DCRT's Tariff Records, that is, allowing them to go into effect on the Project's first day of commercial operation, as DCRT requested, DCRT was not "aggrieved" for purposes of FPA section 313(a).⁶¹ The Hearing Order also stands apart

adversely affect complainant but only affects his rights adversely on the contingency of future administrative action"); *FPC v. Metro. Edison Co.*, 304 U.S. 375, 384 (1938) ("The provision for review [in FPA section 313(b)] thus relates to orders of a definitive character dealing with the merits of a proceeding before the Commission and resulting from a hearing upon evidence and supported by findings appropriate to the case."); *CSX Transp., Inc. v. Surface Transp. Bd.*, 774 F.3d 25, 30 ("When completion of an agency's processes may obviate the need for judicial review, it is a good sign that an intermediate agency decision is not final." (quotation marks omitted)).

⁵⁹ See, e.g., *La. Pub. Serv. Comm'n*, 182 FERC ¶ 61,080 at P 6; *Pub. Citizen, Inc., v. Midcontinent Indep. Sys. Operator, Inc.*, 180 FERC ¶ 61,158, at P 4 (2022); *Red Horse Wind 2*, 172 FERC ¶ 61,147, at P 3 (2020); *City of Hamilton*, 82 FERC ¶ 61,349, at 62,359 (1998); see also *Standard Oil*, 449 U.S. at 242-43 (holding that the burdens of participating in the administrative process are "different in kind and legal effect from the burdens attending" final agency action); *La. Pub. Serv. Comm'n, v. Sys. Energy Res., Inc.*, 167 FERC ¶ 61,240, at P 10 (2019) (finding that challenge to Commission order, including with respect to application of the refund period under FPA section 206, was nonfinal and not subject to rehearing); *Midcontinent Indep. Sys. Operator, Inc.*, 188 FERC ¶ 61,211, at PP 12, 14 (2024); *Reliable Automatic Sprinkler Co.*, 324 F.3d at 731 ("An agency action is deemed final if it is 'definitive' and has a 'direct and immediate . . . effect on the day-to-day business' of the party challenging the agency action" (internal quotation marks omitted, quoting *Standard Oil*, 449 U.S. at 239)).

⁶⁰ See *MediNatura, Inc. v. FDA*, 998 F.3d 931, 938 (D.C. Cir. 2021) ("The law surrounding the [Administrative Procedure Act's (APA)] finality requirement is hardly crisp and our precedent lacks many self-implementing, bright-line rule[s], given the pragmatic and flexible nature of the inquiry as a whole." (quotation marks omitted)); *Nat'l Council of Agric. Emps. v. United States Dep't of Lab.*, 143 F.4th 395, 410 (D.C. Cir. 2025) (same).

⁶¹ *Papago Tribal Util. Auth.*, 628 F.2d at 247 ("Even if an agency violates a statutory duty, its order might not be immediately reviewable unless the order infringes a substantial interest of a party in a way which is not remediable upon review of final judgment."); see *Reliable Automatic Sprinkler Co.*, 324 F.3d at 731 ("An agency action is deemed final if it is 'definitive' and has a 'direct and immediate . . . effect on the day-to-

from other types of interlocutory orders that courts have treated as final and immediately reviewable. For example, courts have found Commission orders were final where they denied an application for intervention⁶² or decided *Mobile-Sierra* claims and thereby resolved distinct, threshold, purely legal issues that could not be effectively remedied if reversed upon the conclusion of the hearing procedures.⁶³ By contrast, to the extent that the Hearing Order erroneously treated DCRT's Tariff Records as a change in rate, the Commission can restore any of DCRT's rights upon review of the final order in these proceedings.⁶⁴ We therefore find that the Hearing Order was not a final order aggrieving DCRT.

22. As an additional consideration supporting this conclusion, and particularly applying the fact-specific finality inquiry,⁶⁵ we note that the Hearing Order never explicitly decided the question of whether DCRT's Tariff Records were an initial versus changed rate.⁶⁶ Rather, this initial versus changed rate issue was not litigated until it was

day business' of the party challenging the agency action" (internal quotation marks omitted, quoting *Standard Oil*, 449 U.S. at 239)).

⁶² See *Pub. Serv. Comm'n of State of N.Y. v. FPC*, 284 F.2d 200, 204 (D.C. Cir. 1960) (holding that "a would-be intervenor is aggrieved, within the meaning of the statute, when his application to intervene is denied" given that the intervenor is not able to represent its interests before the Commission by virtue of that denial); *Beyond Nuclear, Inc. v. U.S. NRC*, 113 F.4th 956, 962 (D.C. Cir. 2024); but cf. *Alaska v. FERC*, 980 F.2d 761, 763 (D.C. Cir. 1992) (order allowing, but placing limits on, intervention was not an aggrieving order subject to immediate judicial review).

⁶³ See *Papago Tribal Util. Auth.*, 628 F.2d at 244-45 (collecting cases); cf. *ASARCO, Inc. v. FERC*, 777 F.2d 764, 771-72 (D.C. Cir. 1985) (order setting *Mobile-Sierra* issue for hearing was not final or appealable; stating that courts have allowed immediate review in "one narrow circumstance: where the Commission has accepted an NGA § 4 filing after considering and rejecting the contention that a *Mobile-Sierra* contract barred § 4 rate increases"). Moreover, a preliminary order deciding to impose the ordinary just, reasonable, and not unduly discriminatory or preferential standard in an FPA section 206 hearing, rather than the heavier *Mobile-Sierra* burden, has been held not to aggrieve the parties and not be immediately appealable. See *Public Serv. Co. of N.M. v. FPC*, 557 F.2d 227, 232-33 (10th Cir. 1977) ("The Commission's orders with respect to Gallup were preliminary in that they merely initiated the [section] 206 proceeding and were procedural insofar as they defined the burden of proof . . .").

⁶⁴ See *Papago Tribal Util. Auth.*, 628 F.2d at 247.

⁶⁵ See *MediNatura, Inc.*, 998 F.3d at 938.

⁶⁶ See Hearing Order, 184 FERC ¶ 61,199 at PP 1, 40-41. Moreover, the

raised by the Presiding Judge. And it was only in the Interlocutory Appeal Order in which the Commission first conducted the relevant analysis and made the explicit determination that DCRT's Tariff Records were a change in rate. This reinforces our conclusion, notwithstanding the Commission's legal error in suspending DCRT's Tariff Records in the Hearing Order, that DCRT was not "aggrieved" by the Hearing Order within the meaning of FPA section 313(a).⁶⁷

23. Because the Hearing Order was nonfinal—indeed, we remain at an interlocutory stage now⁶⁸—it was not incumbent on DCRT to seek rehearing at the time the Commission issued that order.⁶⁹ CAISO, Transmission Customers, and ETCC's efforts to persuade us to a contrary conclusion are not convincing. While Intervenor's rely heavily on DCRT's failure to seek immediate rehearing of the Hearing Order, finality is a condition precedent to the obligation to seek rehearing. CAISO relies on parsing the Commission's intentions in the Hearing Order to argue that the Commission there treated the Tariff Records as a change in rate and ETCC adds that DCRT's conduct suggests that it viewed them the same way until suddenly reversing course.⁷⁰ But these arguments do not inform the assessment of whether the Hearing Order was final under the controlling legal standard. Likewise, Intervenor's arguments regarding the extent of the Commission's authority to modify a final order where rehearing has not been sought to correct ministerial and clerical errors or under FPA section 309 are immaterial to our

Commission's boilerplate in the Hearing Order referenced both FPA section 205 and FPA section 206. *See id.*, ordering para. (B).

⁶⁷ *See Kan. Cities v. FERC*, 723 F.2d 82, 85-86 (D.C. Cir. 1983) (explaining that there was "considerable doubt whether the cities were persons 'aggrieved' by the earlier order and were therefore entitled to seek rehearing and review at that time"). The issue of initial versus changed rates is also linked to the ultimate disposition of the claims at issue here because it determines which party bears the burden of proof. *See id.*

⁶⁸ The parties have styled their filings as requests for rehearing of the Interlocutory Appeal Order and the Rehearing Order, and we have followed rehearing procedures out of an abundance of caution and to provide guidance to the Presiding Judge and parties consistent with the purpose of the interlocutory appeal process.

⁶⁹ *Cf. United Gas Improvement Co. v. Callery Properties, Inc.*, 382 U.S. 223, 230 (1965) ("An agency, like a court, can undo what is wrongfully done by virtue of its order."); *Tenn. Gas Pipeline Co. v. FERC*, 871 F.2d 1099, 1108 (D.C. Cir. 1989) (finding that Commission may "act on its own motion to consider arguments *not* raised in a timely petition for rehearing"); *Tex. E. Transmission Corp. v. FERC*, 102 F.3d 174, 190 (5th Cir. 1996).

⁷⁰ *See supra* PP 15-16.

decision here,⁷¹ which rests on finding that the Hearing Order was not final. Nor are we persuaded by CAISO's invocation of laches on the theory that DCRT improperly delayed in seeking rehearing,⁷² given that we conclude DCRT was not required to seek rehearing of the Hearing Order at the time it was issued.⁷³ Lastly, while parties to the *Chehalis* and *Trans Bay* matters sought immediate rehearing of the orders that addressed whether their filings were initial versus changed rates,⁷⁴ those cases do not address the obverse circumstance presented here, where we consider whether DCRT was *required* to immediately seek rehearing of the Hearing Order.

C. Presiding Judge Consideration of Initial Versus Changed Rates

1. Rehearing Requests

24. CAISO argues that the Hearing Order found that DCRT's Tariff Records are a change in rate and that the Presiding Judge lacked authority to revisit this determination.⁷⁵ CAISO contends that the Interlocutory Appeal Order "confirmed that the issue of whether the Tariff Records constitute an initial rate or a changed rate was not within the scope of the issues set for hearing before the Presiding Judge."⁷⁶ Despite this, CAISO asserts, the Presiding Judge wrongly assumed that "in any proceeding where the Commission sets an FPA section 205 filing for hearing and has not explicitly discussed its analysis of whether a rate filing is an initial rate filing or a change in rate," the presiding Administrative Law Judge has the authority to resolve that issue.⁷⁷ CAISO here argues that this is prohibited by FPA section 313(a), because the Hearing Order was final and non-appealable, and is contrary to Commission precedent prohibiting

⁷¹ See CAISO Rehearing Request at 35-37.

⁷² See *id.* at 37-38.

⁷³ See also *infra* Section II.H (discussing similar arguments regarding retroactivity, reliance, and dilatory behavior).

⁷⁴ See Transmission Customers Rehearing Request at 7-8; CAISO Rehearing Request at 54-55; see *Chehalis Power Generating, L.P.*, 113 FERC ¶ 61,259, at PP 1-2 (2005); *Trans Bay*, 132 FERC ¶ 61,083 at P 1.

⁷⁵ See CAISO Rehearing Request at 38-43.

⁷⁶ *Id.* at 39 (further arguing that the Commission in the Interlocutory Appeal Order reinforced that the initial versus changed rate question was not an issue to be addressed by the Presiding Judge by itself deciding that issue).

⁷⁷ *Id.*

Administrative Law Judges from exceeding the authority delegated to them.⁷⁸ CAISO contends that the Presiding Judge erred by overstepping his authority and allowing the parties to litigate the initial versus changed rates question when that matter was not properly before him.⁷⁹ And, similar to its arguments regarding DCRT's failure to seek rehearing of the Hearing Order, CAISO highlights that for the Presiding Judge's decision finding that DCRT's Tariff Records are an initial rate to be correct, this would necessitate a finding that the Commission erred in failing to initiate a proceeding under FPA section 206 and following the attendant procedures for doing so.⁸⁰

2. Commission Determination

25. We disagree with CAISO's arguments. Whether DCRT's Tariff Records constitute an initial or changed rate has now been squarely presented in the context of this interlocutory appeal. On the facts before us, we find it appropriate to resolve this question now, irrespective of whether it was set for hearing before the Presiding Judge. In particular, we have found that the Hearing Order was not a final order resolving this issue, we have taken an interlocutory appeal on this issue, and the Hearing Order's ambiguity as to whether DCRT's Tariff Records were a changed rate—and particularly the lack of a determination on this point—has led to uncertainty.⁸¹ Accordingly, we find that the appropriate course is to address the merits of this issue.

26. In the alternative, we recognize that the Commission stated in the Interlocutory Appeal Order that “the question of whether DCRT's Tariff Records constitute an initial or changed rate was not an issue of fact that was set for hearing.”⁸² But while the Hearing Order did not explicitly set for hearing the question of whether DCRT's Tariff Records constitute an initial versus changed rate, the Hearing Order did not limit the hearing to *any* particular set of issues of fact. Rather, it generally stated that “DCRT's filing raises issues of material fact that cannot be resolved based on the record before us

⁷⁸ See *id.* at 40-41 (citing *Epsilon*, 185 FERC ¶ 61,126 at PP 370, 374, 375 n.952).

⁷⁹ See *id.* at 41-42 (citing *Epsilon*, 185 FERC ¶ 61,126 at PP 370, 374, 375 n.952; *Iran Air v. Kugelman*, 996 F.2d 1253, 1260 (D.C. Cir. 1993); *Cent. La. Elec. Co.*, 64 FERC ¶ 63,020, at 65,065 (1993); *Blumenthal v. ISO New Eng. Inc.*, 128 FERC ¶ 63,017, at P 7 (2009); *Vills. of Jackson Ctr. v. Dayton Power & Light Co.*, 91 FERC ¶ 61,127, at 61,484 (2000)).

⁸⁰ See *id.* at 42-43.

⁸¹ See *supra* P 23 and note 69 (discussing the Commission's authority to correct its own errors).

⁸² Interlocutory Appeal Order, 191 FERC ¶ 61,212 at P 28.

and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.”⁸³ And, with one exception that is not pertinent to whether the initial versus changed rate issue was set for hearing, the Commission did not purport to limit the issues set for hearing before the Presiding Judge.⁸⁴ Moreover—and as discussed above—the Commission did not at any point in the Hearing Order address the substance of whether DCRT’s Tariff Records constitute an initial or changed rate.⁸⁵ We therefore find that this was not an issue placed beyond the scope of the Presiding Judge’s authority.

27. The cases that CAISO relies on in arguing to the contrary are inapposite. In *Epsilon*, the presiding judge in the initial decision attempted to second-guess the Commission’s determination that an investigation was warranted in the first place—a matter that was addressed and explicitly resolved in the order initiating hearing procedures.⁸⁶ And while presiding judges have only the jurisdiction conferred by Commission in setting the hearing,⁸⁷ the Hearing Order in this case did not place the issue of whether DCRT’s Tariff Records constitute an initial or changed rate beyond the scope

⁸³ Hearing Order, 184 FERC ¶ 61,199 at P 40. The Commission did “note that the APSA included a commitment by DCRT not to seek an ROE greater than 10% for the life of the Project, inclusive of the 50 basis point adder,” *id.*, implicitly suggesting this was an issue that might merit exploration, as appropriate.

⁸⁴ *See id.* P 40 & n.68 (“The Commission’s findings in the Declaratory Order are not at issue in this proceeding and thus not within the scope of the hearing and settlement judge procedures ordered below.”).

⁸⁵ *See id.*; *supra* P 22 and note 67 (noting that this issue was relevant to which party bears the burden of proof before the Presiding Judge).

⁸⁶ *See Epsilon*, 185 FERC ¶ 61,126 at PP 370, 375 & n.952 (“The Initial Decision argues that the Commission’s Hearing Order erred by setting Colonial’s grandfathered rates for investigation.”); *id.* PP 376-80; *Epsilon Trading, LLC*, 164 FERC ¶ 61,202, at P 50 (2018). Similarly, in *Central Louisiana Electric Co.*, quoted in a footnote in *Epsilon*, a presiding judge found that certain subpoenas were outside of the scope of issues set for hearing because they related to whether the hearing was properly initiated in the first place. 64 FERC at 65,065-66 (explaining further that a presiding judge “is not limited to trying only those issues specifically set forth in the Commission’s hearing order” but may, instead, “include such other issues as are reasonably deemed to bear on an appropriate assessment of the justness and reasonableness of proposed rates”).

⁸⁷ *Blumenthal v. ISO New Eng. Inc.*, 128 FERC ¶ 63,017 at P 7 (explaining that the hearing order there “expressly state[d]” that “[t]he disputed issue identified in the complaints, arising under section 222 of the FPA and section 1c.2 of the Commission’s regulations, [] is the capacity importers’ intent behind the high-priced offers”).

of the jurisdiction of the Presiding Judge, for the reasons just discussed. Likewise, in *Villages of Jackson Center*, the order setting the hearing expressly stated the single issue set for hearing.⁸⁸

D. Notice Under the Administrative Procedure Act (APA), 5 U.S.C. § 554

1. Rehearing Requests

28. ETCC argues that the Commission’s decision in the Rehearing Order, which shifted the burden of proof from DCRT to Trial Staff and Intervenors, results in a violation of the APA’s procedural requirements.⁸⁹ Specifically, ETCC cites 5 U.S.C. § 554(b)(2), which requires that “(b) Persons entitled to notice of an agency hearing shall be timely informed of: . . . the legal authority and jurisdiction under which the hearing is to be held.”⁹⁰ Emphasizing that the parties both initially and after the Interlocutory Appeal Order proceeded on the basis that DCRT bore the burden of proof, ETCC contends that this provision of the APA “prohibits the Commission’s flip flop on the law and jurisdiction to be applied so late into an active proceeding.”⁹¹ In support, ETCC argues that the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has found that a change to the controlling standard, applied retroactively, runs afoul of 5 U.S.C. § 554(b).⁹² ETCC states that if the Commission had established an FPA section 206 proceeding from the start, the parties would have approached the case differently with regard to the testimony they submitted and the discovery they conducted.⁹³ Moreover, ETCC points to the maximum fifteen-month refund period under FPA section 206, arguing that they would have sought to manage the case in a manner

⁸⁸ See 91 FERC at 61,484 (“The March 15 Order expressly states that the issue set for hearing is ‘whether the PSAs give DP&L the right to charge the Municipals for purchased power whenever it provides service pursuant to Rate Schedule E.’” (citation omitted)).

⁸⁹ See ETCC Rehearing Request at 19-23.

⁹⁰ *Id.* at 19; 5 U.S.C. § 554(b)(2).

⁹¹ ETCC Rehearing Request at 20-21 (arguing that settlement discussions had occurred, testimony had been submitted, and the hearing had commenced with DCRT assuming the burden of proof).

⁹² *Id.* at 21 (citing *Hatch v. FERC*, 654 F.2d 825, 835 (D.C. Cir. 1981); see also *id.* at 8-9, 23 (citing *Rodale Press, Inc., et al. v. FTC*, 407 F.2d 1252 (D.C. Cir. 1968); *The Bendix Corp. v. FTC*, 450 F.2d 534 (6th Cir. 1971)).

⁹³ See *id.* at 22.

reflecting this limitation, had it been clearly imposed from the start.⁹⁴ ETCC states that allowing Trial Staff and Intervenors to submit rebuttal testimony does not remedy this alleged violation of the APA.⁹⁵

2. Commission Determination

29. As discussed above, the Rehearing Order corrected an error made in a nonfinal order, at an interlocutory stage of this matter—one which, had it been allowed to stand, might have persisted until after the conclusion of the proceedings before the Presiding Judge. In doing so, the Rehearing Order allowed the parties to continue to the hearing with notice of the applicable burden of proof. Likewise, the Presiding Judge (and, eventually, the Commission if further review is sought) can render a decision based on a record built with knowledge of where that burden properly lies.

30. Issuance of the Rehearing Order is consistent with the requirements of the APA, as illustrated by the cases that ETCC itself relies on. For instance, in *Hatch* the Commission altered its interpretation of FPA section 305(b),⁹⁶ in a way that changed the nature of proof required of applicants for an exemption from the restriction of that provision.⁹⁷ The Commission did so without sufficient notice of the change prior to the Commission's decision and without providing the petitioner the opportunity to supplement the record with evidence relevant to that new standard, which the court held warranted remanding the decision to the Commission for further proceedings.⁹⁸ The court's holding, however, was not that a change to the standard of review was impermissible, even after the hearing had concluded.⁹⁹ Instead, it was that “the party before the agency must be given notice

⁹⁴ *See id.*

⁹⁵ *See id.* at 22-23 (arguing that DCRT's rebuttal testimony is improper and must be stricken).

⁹⁶ 16 U.S.C. § 825d(b).

⁹⁷ *See Hatch*, 654 F.2d at 835-37; *see also id.* at 834 (“[T]he Commission has decided to change its substantive interpretation of section 305(b) by changing the nature of the proof required of applicants.”).

⁹⁸ *See id.* at 835-37; *id.* at 826 (“[A] remand is necessary because the Commission . . . did not provide Petitioner an opportunity to supplement the record with evidence relevant to the new standard.”).

⁹⁹ *See id.* at 837 (“It is certainly within an agency's discretion to change rules and reinterpret statutory mandates in the course of adjudication”)

and an opportunity to introduce evidence bearing on the new standard.”¹⁰⁰ The other cases that ETCC cites are similar.¹⁰¹

31. Here, the Commission has not imposed a new standard without notice and without the opportunity to submit evidence pertinent to the application of that standard. Rather, it has provided notice of where the burden of proof will lie prior to the close of the hearing and prior to any decision on the merits. The Presiding Judge has already ordered that the parties challenging DCRT’s filing may submit additional evidence in the form of rebuttal testimony.¹⁰² Trial Staff and Intervenors thus have been afforded the relevant notice and opportunity to submit evidence that the APA requires under *Hatch* and similar cases. Indeed, in both *Hatch* and *Bendix* the court found that allowing supplementation of the record even after the close of the hearing was an appropriate remedy that would be consistent with the APA.¹⁰³ Moreover, the Commission has broad latitude in how it structures the proceedings before it.¹⁰⁴

¹⁰⁰ *Id.* at 835; *see id.* at 836 (“The agency need not delay implementing the new standard across the board while it allows the individual party subject to the standard for the first time *after the hearing record had been closed the chance to supplement the record.*” (emphasis added)).

¹⁰¹ *See Rodale Press, Inc.*, 407 F.2d at 1255-57 (finding that the Federal Trade Commission failed to comply with the APA when “[t]he theory under which the complaint was issued and under which the hearing before the examiner was held differed from the theory upon which the complaint was ultimately sustained by the Commission,” without allowing the petitioner “the opportunity to present argument under the new theory of violation”); *Bendix Corp.*, 450 F.2d at 542 (“Bendix was not accorded the opportunity to present proof and argument under the toehold theory of violation.”).

¹⁰² *See DCR Transmission, L.L.C.*, Order Waiving Answer Period and Adopting Revised Procedural Schedule (issued Feb. 5, 2026) (also allowing discovery related to such rebuttal testimony).

¹⁰³ *See Hatch*, 654 F.2d at 837 (explaining that the Commission could “implement[] the new standard across the board while it allows the individual party subject to the standard for the first time after the hearing record had been closed the chance to supplement the record” with “any additional relevant evidence, in form and manner prescribed by the Commission”); *Bendix Corp.*, 450 F.2d at 542 (“Upon rehearing the Commission may consider any evidence previously taken and now on file and such additional evidence as may be admissible and relevant to the issues involved.”). ETCC’s argument that the APA requires striking DCRT’s rebuttal testimony, *see* ETCC Rehearing Request at 23-24, is thus not well taken.

¹⁰⁴ *See Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S.

E. Commission’s Finding that the Tariff Records Constitute an Initial Rate

1. DCRT’s Tariff Filing

a. Rehearing Requests

32. Transmission Customers and CAISO argue that the Commission erred in not addressing the nature of the service as described in DCRT’s original filing, claiming that DCRT treated the filing as a change in rate.¹⁰⁵ Transmission Customers and CAISO contend that DCRT filed the Tariff Records with reference to 18 C.F.R. § 35.13, which addresses changes in rate schedules, tariffs, or service agreements, rather than 18 C.F.R. § 35.12, which addresses initial rate schedules and tariffs.¹⁰⁶ Transmission Customers allege that DCRT did not demonstrate it had complied with the information requirements of § 35.12 nor did it request waiver of such requirements. Instead, Transmission Customers and CAISO argue DCRT requested waiver of requirements in § 35.13(h).¹⁰⁷ Transmission Customers contend that both DCRT and the Commission considered DCRT’s Tariff Records a change in rate at the time of filing, and if the Commission had instead considered the Tariff Records to be an initial rate filing, it should have rejected the filing as deficient.¹⁰⁸ Transmission Customers argue that DCRT cannot have its

519, 543 (1978) (“Absent constitutional constraints or extremely compelling circumstances the administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.” (quotation marks omitted)); *Mich. Consol. Gas Co. v. FERC*, 883 F.2d 117, 125 (D.C. Cir. 1989).

¹⁰⁵ Transmission Customers Rehearing Request at 14-16; CAISO Rehearing Request at 29-30.

¹⁰⁶ Transmission Customers Rehearing Request at 14-16 (citing Transmittal at 48-50); CAISO Rehearing Request at 30 (citing Transmittal at 3 n.8, 12, 49, 50).

¹⁰⁷ Transmission Customers Rehearing Request at 14; CAISO Rehearing Request at 30 (citing Transmittal at 49-50).

¹⁰⁸ Transmission Customers Rehearing Request at 15 (citing *Basin Elec. Power Coop.*, 169 FERC ¶ 61,158, at P 20 (2019); *Tri-State Generation & Transmission Ass’n*, 169 FERC ¶ 61,012 (2019); *Ky. Utils. Co. v. FERC*, 689 F.2d 207, 211 (D.C. Cir. 1982); 18 C.F.R. § 35.5) (2025).

Tariff Records treated as a changed rate for purposes of the filing requirements, and an initial rate for purposes of burden of proof and FPA section 206 refund limitations.¹⁰⁹

33. CAISO states that the Hearing Order references DCRT's statement that it submitted its Tariff Records pursuant to 18 C.F.R. § 35.12 of the Commission's regulations, but argues that the Commission did not make any findings as to whether that statement was accurate.¹¹⁰ In any case, CAISO acknowledges that the Commission stated in the Interlocutory Appeal Order that it "does not rely on whether a public utility styles its proposed rate as an initial rate or as a change in rate."¹¹¹

b. Commission Determination

34. As discussed in the Rehearing Order, the Commission's evaluation of whether a rate is an initial rate or a changed rate hinges on whether a new service is being provided to new customers.¹¹² The Commission does not rely on whether a public utility styles its proposed rate as an initial rate or as a change in rate.¹¹³ DCRT's styling of the Tariff Records as either an initial or changed rate is, therefore, not relevant to our decision.¹¹⁴

¹⁰⁹ *Id.*

¹¹⁰ CAISO Rehearing Request at 29-30 (citing Hearing Order, 184 FERC ¶ 61,199 at P 1).

¹¹¹ *Id.* at 30 (quoting Interlocutory Appeal Order, 191 FERC ¶ 61,212 at P 29).

¹¹² Rehearing Order, 194 FERC ¶ 61,085 at P 15.

¹¹³ *See Fla. Power & Light Co. v. FERC*, 617 F.2d 809, 815 (D.C. Cir. 1980) (explaining that the FPA "cannot be read" to "imply that a utility company can secure for itself the benefits of an initial rate simply by how it drafts its filing, irrespective of the Commission's view of the matter in the exercise of its technical expertise"); *Middle S. Energy, Inc.*, 31 FERC ¶ 61,304, at 61,627 (1985) (relying on *Florida Power & Light* in rejecting a similar argument, explaining that the decision to submit an agreement as a separate rate schedule was not dispositive of whether the filing was an initial or changed rate).

¹¹⁴ Even if we credit Transmission Customers' argument that DCRT's filing was deficient, *see* Transmission Customers Rehearing Request at 15, this would not affect the substance of our initial versus changed rate analysis, which is controlling on the issue raised in the interlocutory appeal.

2. Consistency with Precedent

a. Rehearing Requests

35. CAISO and Transmission Customers argue that the Commission's finding that the Tariff Records are an initial rate is legally flawed because it fails to take into account that DCRT's TRR is not a rate itself but rather is an input to the CAISO Access Charge.¹¹⁵ They argue that the Commission had correctly found in the Interlocutory Appeal Order that there was no new customer or new service because transmission customers in CAISO "had already been receiving the same jurisdictional service (transmission service over the CAISO-controlled transmission system) with costs recovered through the CAISO [Access Charge]."¹¹⁶ According to Transmission Customers, the CAISO Tariff provides that PTOs with high voltage regional transmission facilities under CAISO's operational control recover their TRR through the CAISO Access Charge.¹¹⁷

36. CAISO and Transmission Customers elaborate that upon DCRT turning over operational control of the Project to CAISO, existing CAISO transmission customers continued to pay the Access Charge to CAISO and the inclusion of DCRT's TRR in the calculation of the Access Charge did not create any new customer relationship.¹¹⁸ They therefore contend that the Tariff Records involve no new customer or new service and are properly classified as a changed rate.¹¹⁹ In support of their argument, CAISO and Transmission Customers cite *Pacific Gas & Electric Co. v. FERC*, where the D.C. Circuit found that "the TRR of each [PTO] can be conceptualized not as its own rate but rather as a cost of the CAISO."¹²⁰ CAISO also argues that DCRT itself acknowledged in its

¹¹⁵ CAISO Rehearing Request at 43-49; Transmission Customers Rehearing Request at 10-13.

¹¹⁶ Transmission Customers Rehearing Request at 12 (quoting Interlocutory Appeal Order, 191 FERC ¶ 61,212 at P 30); CAISO Rehearing Request at 44 (same).

¹¹⁷ Transmission Customers Rehearing Request at 11 (citing CAISO, CAISO eTariff, § 26.1 (Access Charges) (8.0.0)).

¹¹⁸ Transmission Customers Rehearing Request at 10-11 (citing DCRT Transmission Owner Tariff, § 7.2 ("Users of DCRT's Regional Transmission Facilities and Entitlements placed under the CAISO's Operational Control shall pay to the CAISO all applicable charges."); CAISO Rehearing Request at 44-45 (citing Transmittal at 2, 3 n.8, 46, 49)).

¹¹⁹ Transmission Customers Rehearing Request at 11 (citing *Sw. Elec. Power Co.*, 39 FERC at 61,293); CAISO Rehearing Request at 45-46.

¹²⁰ Transmission Customers Rehearing Request at 12 (quoting *Pac. Gas & Elec.*

transmittal letter for the Tariff Records that the applicable rate is the CAISO Access Charge by describing the TRR as being collected under the CAISO Access Charge.¹²¹

37. Transmission Customers allege that the Commission failed to provide any explanation of its change in position from the Interlocutory Appeal Order to the Rehearing Order, and that the Rehearing Order did not even mention the Commission's prior determination that DCRT does not provide a new service to customers under the CAISO Tariff. Further, Transmission Customers argue that the Rehearing Order does not acknowledge that CAISO is the provider of transmission service nor identify what other service DCRT is providing to new customers.¹²²

38. CAISO also argues that DCRT's Tariff Records constitute a change in rate from the rate on file in the DCRT Approved Project Sponsor Agreement (APSA) between CAISO and DCRT.¹²³ CAISO argues that the APSA follows the *pro forma* APSA accepted by the Commission as Appendix X to the CAISO Tariff, and is a rate on file with the Commission under the CAISO Tariff via reporting through the Commission's Electric Quarterly Report (EQR) requirements.¹²⁴ CAISO argues that the APSA contains provisions that directly govern the costs that DCRT is entitled to recover through its Base TRR; for example, it includes a cap on project construction costs recoverable through the TRR and a limited number of clearly specified inclusions to such cost cap.¹²⁵ CAISO argues that the Tariff Records constitute a change in rate from the rate on file in the APSA because DCRT seeks to include in its TRR costs that exceed the cost cap in the APSA as well as other costs not permitted by the APSA.¹²⁶ CAISO alleges that failure to uphold the APSA and to treat the Tariff Records as a change in rate would allow DCRT and any other similarly-situated Approved Project Sponsors to evade binding cost caps

Co. v. FERC, 306 F.3d 1112, 1116 (D.C. Circ. 2002)); CAISO Rehearing Request at 43-44 (same).

¹²¹ CAISO Rehearing Request at 44-45 (citing Transmittal at 2, 3 n.8, 46, 49).

¹²² Transmission Customers Rehearing Request at 13.

¹²³ CAISO Rehearing Request at 46-49; *cf.* Transmission Customers Rehearing Request at 23 (arguing that "the APSA confirms that the rate in question is the existing CAISO TAC").

¹²⁴ CAISO Rehearing Request at 46-47.

¹²⁵ *Id.* at 47.

¹²⁶ *Id.* at 48.

and cost containment measures they agreed to in the competitive solicitation process by filing an “initial rate” that ignores such agreed-to commitments.¹²⁷

39. CAISO further claims that in *Middle South Energy, Inc. v. FERC*, the court confirmed the Commission has authority to order refunds for changes resulting in an increase in rates, and that the Tariff Records will result in an increase in rates in CAISO, thereby confirming that the Commission was correct to impose a refund obligation in the Hearing Order.¹²⁸ CAISO further states that *Middle South Energy*, which indicated that the question of what constitutes a changed rate is a matter for the Commission’s technical expertise, confirms that the Hearing Order reflects that the Commission exercised that expertise and found that the Tariff Records were a changed rate.¹²⁹

40. Transmission Customers argue that the Commission’s decision in the Rehearing Order contravenes decades of precedent that treated filings by similarly-situated CAISO PTOs as changed rates.¹³⁰ Specifically, Transmission Customers allege that the Commission has consistently treated TRRs for new CAISO PTOs developing high voltage transmission facilities as changed rates under FPA section 205.¹³¹ CAISO makes a similar argument, collecting and discussing various cases that it contends support this conclusion.¹³²

41. Transmission Customers argue that the Commission’s reliance on *Fern Solar* is misplaced, as Fern Solar was providing a service (reactive power) to PJM

¹²⁷ *Id.* at 48-49.

¹²⁸ See CAISO Rehearing Request at 50 (*Middle S. Energy, Inc. v. FERC*, 747 F.2d 763, 770 (D.C. Cir. 1984)).

¹²⁹ See *id.* at 50-51.

¹³⁰ Transmission Customers Rehearing Request at 16.

¹³¹ *Id.* (citing *MidAm. Transco Cent. Cal. Transco, LLC*, 147 FERC ¶ 61,179 at P 56; *DesertLink, LLC*, 161 FERC ¶ 61,126 at P 3; *NextEra Energy Transmission W., LLC*, 154 FERC ¶ 61,009 at P 1; *LS Power Grid Cal., LLC*, 175 FERC ¶ 61,256 (2021)).

¹³² See CAISO Rehearing Request at 55-60 (citing *NextEra Energy Transmission W., LLC*, 154 FERC ¶ 61,009; *Morongo Transmission LLC*, 174 FERC ¶ 61,171; *DesertLink, LLC*, 158 FERC ¶ 62,189; *DesertLink, LLC*, 161 FERC ¶ 61,126; *MidAm. Transco Cent. Cal. Transco, LLC*, 147 FERC ¶ 61,179; *TransCanyon DCR, LLC*, 152 FERC ¶ 61,017; *GridLiance W. Transco LLC*, 158 FERC ¶ 62,136; *GridLiance W. Transco LLC*, 160 FERC ¶ 61,003; *Startrans IO, L.L.C.*, 122 FERC ¶ 61,306; *Trans-Elect NTD Path 15, LLC*, 109 FERC ¶ 61,249, at P 2 (2004)).

Interconnection, L.L.C. (PJM), with PJM compensating Fern Solar for that service.¹³³ Transmission Customers argue that here, in contrast, DCRT is not providing transmission service at all, as it is CAISO that is providing the service using DCRT and other PTOs' facilities.¹³⁴ Transmission Customers further argue that the Commission failed to provide a reasoned explanation why it has treated DCRT's Tariff Records differently than other TRRs for transmission projects that were not yet in service, and has not provided an explanation for departing from its earlier statement "that the fact that DCRT's Project had not achieved commercial operation at the time DCRT filed the Tariff Records is not determinative of whether DCRT's Tariff Records constitute an initial or changed rate."¹³⁵

42. Transmission Customers and CAISO both argue that the Commission erred in relying on *Trans Bay*. Transmission Customers argue that unlike DCRT's Tariff records, Trans Bay's filing included a TRR for low voltage facilities.¹³⁶ Transmission Customers contend that unlike with high voltage regional transmission facilities that are recovered through CAISO's TAC, the CAISO Tariff provides that PTOs may collect rates associated with low voltage facilities directly from transmission customers through a Local Access Charge.¹³⁷ Therefore, Transmission Customers allege that PTOs like Trans Bay with low voltage facilities do have transmission service customers and their first TRR filing does create new customer relationships.¹³⁸ Transmission Customers also allege that the Commission's statement in the *Trans Bay* order describing Trans Bay's filing as an "initial rate" was dictum, since the question of whether Trans Bay's filing was an initial rate was not briefed by any party and the Commission did not provide any explanation supporting its statement.¹³⁹ CAISO argues that in the *Trans Bay* proceeding the Commission, on rehearing, "(1) found that the rate in question was an initial rate and (2) explicitly initiated an FPA section 206 proceeding, consistent with the requirements

¹³³ Transmission Customers Rehearing Request at 17. Transmission Customers contend that under PJM's tariff structure, PJM "compensate[s] owners of generation and non-generation resources for the capability to provide reactive power to PJM." *Id.* (quoting *Fern Solar LLC*, 189 FERC ¶ 61,035 at P 3 (2024)).

¹³⁴ *Id.* at 17-18 & n.55.

¹³⁵ *Id.* at 18 (quoting Interlocutory Appeal Order, 191 FERC ¶ 61,212 at P 29).

¹³⁶ *Id.* at 19 (citing *Trans Bay*, 129 FERC ¶ 61,225 at P 8).

¹³⁷ *Id.* (citing CAISO, CAISO eTariff, § 26.1, § 26.1(d)).

¹³⁸ *Id.*

¹³⁹ *Id.*

of FPA section 206(b).”¹⁴⁰ CAISO also argues that *Trans Bay* is further distinguishable because it did not involve a previously-filed APSA.¹⁴¹

43. Transmission Customers argue that the Commission should not rely on a series of cases involving Citizen Energy Affiliates, where they argue the Commission invoked FPA section 206 to protect customers from potentially inflated estimated TRRs.¹⁴² Transmission Customers state that in each case the PTO proposed a TRR based on estimated costs to become effective at a future, undetermined effective date, and requested that the proposed TRR be accepted subject to a subsequent filing that would update the TRR based on actual costs.¹⁴³ Transmission Customers state that the Commission accepted the proposed TRR in each case with an indefinite effective date, and directed the PTO to submit a new TRR based on actual costs 60 days after the date upon which their projects were turned over to CAISO’s operational control. Transmission Customers argue that the Commission initiated the FPA investigations to protect customers during this 60-day period in the event the updated TRRs based on actual costs were lower than the estimated TRRs included in the original filings.¹⁴⁴

b. Commission Determination

44. We continue to find that the Tariff Records are an initial rate as they provide for a new service to new customers.¹⁴⁵ The Commission has consistently held since *Southwestern Electric Power Co.* that “an initial rate filing is one which provides for [1] a new service [2] to a new customer, and that both the service and the customer must be new.”¹⁴⁶ Transmission Customers and CAISO point to several orders where the

¹⁴⁰ CAISO Rehearing Request at 55 (asserting that the Commission “did neither of those things in the September 2023 Hearing Order or the May 2024 Consolidation Order”).

¹⁴¹ *Id.* at 56.

¹⁴² Transmission Customers Rehearing Request at 19-20 (citing *Citizens Sunrise Transmission LLC*, 138 FERC ¶ 61,129 at P 1; *Citizens Sycamore-Penasquitos Transmission LLC*, 164 FERC ¶ 61,149, at P 3 (2018); *Citizens S-Line Transmission LLC*, 178 FERC ¶ 61,067, at P 3 (2022)).

¹⁴³ *Id.* at 20.

¹⁴⁴ *Id.*

¹⁴⁵ Rehearing Order, 194 FERC ¶ 61,085 at P 17.

¹⁴⁶ *Sw. Elec. Power Co.*, 39 FERC at 61,293; see also *Chehalis Power Generating, L.P.*, 152 FERC ¶ 61,050, at P 14 (2015) (“In order for a rate to be considered an initial

Commission accepted and suspended TRR filings for transmission projects that were not yet operational.¹⁴⁷ We do not find the cited orders instituting section 205 proceedings address the issue in this case, however, as the Commission in those orders did not apply its precedent to specifically address whether or not the filing presented an initial or changed rate.¹⁴⁸

45. We continue to follow *Trans Bay*, where the Commission did expressly apply its precedent in *Southwestern Electric Power Co.* to find that a proposed TRR recoverable through the CAISO Access Charge is an initial rate.¹⁴⁹ Transmission Customers argue that *Trans Bay* is distinguishable because a portion of the proposed TRR in *Trans Bay* was attributable to low voltage activities.¹⁵⁰ Transmission Customers contend that this distinction matters because the CAISO Tariff allegedly provides for PTOs to collect rates associated with low voltage facilities directly from transmission customers through a Local Access Charge.¹⁵¹ But while load-serving PTOs may collect the Local Access

rate, it must provide for a new service to a new customer.”) (citation omitted).

¹⁴⁷ Transmission Customers Rehearing Request at 16; CAISO Rehearing Request at 55-60. Transmission Customers’ allegation that the Commission has been consistent for transmission projects within CAISO ignores several instances, both from CAISO and from other Regional Transmission Organizations, where the Commission has proceeded under FPA section 206. *See Viridon Cal. LLC*, 186 FERC ¶ 61,143, at P 33 (2024); *Valley Link Transmission Md., LLC*, 191 FERC ¶ 61,113 at PP 2, 44 (2025); *Mid-Atlantic Offshore Dev., LLC*, 188 FERC ¶ 61,198, at PP 2, 27 (2024); *Viridon Mid-Atlantic LLC*, 186 FERC ¶ 61,074, at PP 2, 20 (2024); *Viridon Sw. LLC*, 186 FERC ¶ 61,123, at PP 2, 16 (2024).

¹⁴⁸ To the extent that the Commission’s prior orders created any confusion due to their failure to address whether the filing was an initial or changed rate under our precedent, *see* Rehearing Order, 194 FERC ¶ 61,085 at P 17, the Rehearing Order clarifies the application of Commission precedent to this fact pattern and does so consistent with the Commission precedent that explicitly considers this question.

¹⁴⁹ *Trans Bay*, 132 FERC ¶ 61,083 at P 25 (citing *Sw. Electric Power Co.*, 39 FERC ¶ 61,099). We have not relied and do not here rely on the cases involving Citizen Energy Affiliates, such that Transmission Customers’ arguments distinguishing those cases are not material. *See supra* P 43.

¹⁵⁰ Transmission Customers Rehearing Request at 18-19. According to *Trans Bay*’s filing, 7.1% of the TRR was attributable to low voltage activities. *Trans Bay*, 129 FERC ¶ 61,225 at P 7.

¹⁵¹ Transmission Customers Rehearing Request at 19 (citing CAISO, CAISO eTariff, § 26.1, § 26.1(d)); *see* CAISO, CAISO eTariff, § 26.1 (8.0.0), at § 26.1(a)

Charge directly from customers,¹⁵² Trans Bay does not serve load.¹⁵³ For non-load-serving PTOs like Trans Bay, the CAISO Tariff provides that “CAISO shall assess the Local Access Charge” to the load-serving PTO “that is directly connected to one or more Local Transmission Facilities of that project, unless otherwise agreed by the affected [PTOs].”¹⁵⁴ Transmission Customers are thus incorrect that the CAISO Tariff permits Trans Bay to collect the Local Access Charge directly from transmission customers and their attempt to distinguish *Trans Bay* on this basis is unpersuasive.

46. Further, that CAISO collects the Access Charge from its customers in order to fund the TRRs of its PTOs does not mean that the “rate” the Commission must evaluate to determine whether a filing presents an initial or changed rate becomes the CAISO Tariff, as Transmission Customers and CAISO contend.¹⁵⁵ While CAISO’s Tariff determines whether and how PTOs are compensated for their TRRs,¹⁵⁶ it is the TO Tariff of individual PTOs like DCRT that commit the PTO to provide transmission service in

(providing that the Access Charge “shall consist, where applicable, of a Regional Access Charge, and a Local Access Charge,” which “shall be designed to recover each [PTO’s] Regional [TRR] and Local [TRR], as applicable”).

¹⁵² CAISO, CAISO eTariff, § 26.1, § 26.1(d).

¹⁵³ Trans Bay Cable LLC, Transmission Owner Tariff (31.0.), at § 5.1 (“As [Trans Bay] is a Non-Load-Serving [PTO], [CAISO] shall charge for and collect the [Local] Access Charge on [Trans Bay’s] behalf pursuant to Section 26.1 and Appendix F, Schedule 3, Section 13 of the [CAISO] Tariff from the [PTO] to whose facilities [Trans Bay’s] Low Voltage Transmission Facilities are directly connected.”); *see also* Trans Bay Cable LLC, Transmission Owner Tariff (1.0.0.), at § 5.1.

¹⁵⁴ CAISO, CAISO eTariff, § 26.1 (8.0.0), § 26.1(f) (emphasis added); *see also* CAISO, CAISO eTariff, app. F (Rate Schedules) (30.0.0), at Schedule 3, § 13.4 (“Unless otherwise agreed by the affected [PTOs], Local Access Charge revenues of a Non-Load-Serving [PTO] shall be calculated for disbursement to that Non-Load-Serving [PTO] on a monthly basis as the sum of Local Access Charges billed by the CAISO to the [load-serving PTOs] pursuant to section 26.1 of the CAISO Tariff.”).

¹⁵⁵ While the Commission found in the Interlocutory Appeal Order “that it is appropriate for the Commission to look at the CAISO [Access Charge] rather than a PTO’s individual rate to determine whether a new service is being provided to new customers,” the Rehearing Order, upon further consideration, set aside the Interlocutory Appeal Order. Rehearing Order, 194 FERC ¶ 61,085 at P 14.

¹⁵⁶ *See, e.g.*, CAISO, CAISO eTariff, app. F (Rate Schedules) (30.0.0), Schedule 3, § 10; *see also* DCRT, Transmission Owner Tariff (2.0.0), at § 7.

accordance with the CAISO Tariff, and set forth the PTO's TRR.¹⁵⁷ Each TRR sets the cost-justified rates and charges at which the PTO offers to sell transmission services to CAISO, with the TO Tariff providing additional "classifications, practices, rules or regulations" which "affect or relate to" such "service, rates, and charges."¹⁵⁸ We do not find the statement in *Pacific Gas and Electric Co.* that "the TRR of each [CAISO] participating transmission owner can be conceptualized not as its own rate but rather as a cost of the CAISO" to be persuasive here, on this issue.¹⁵⁹ There, the court did not address whether TO Tariffs with TRRs are initial or changed rates under FPA section 205, and, therefore, did not address the issue presented here.¹⁶⁰ In any event, by conceptualizing the TRR as a "cost" of CAISO, the court's decision simply reflects—as we have explained and the parties do not dispute—that each PTO's TRR is recovered through CAISO's Access Charge.

47. Our treatment of DCRT's Tariff Records as the rate at issue here is further consistent with the Commission's treatment of reactive power revenue requirements. In *Fern Solar*, the tariff at issue was Fern Solar LLC's (Fern) revenue requirement for providing reactive power from its generating facility.¹⁶¹ The tariff of the transmission provider, PJM, stated that PJM would pay generating facilities in the PJM region for reactive power in accordance with each facility's revenue requirement.¹⁶² The Commission noted that "Fern was not commercially operational when it submitted its initial FPA section 205 filing and thus could not, as a practical matter, provide any Reactive Service to any customers prior to filing its rate schedule."¹⁶³ The Commission went on to note that "[g]iven [Fern's] non-operational status," Fern's tariff filing was "an initial rate."¹⁶⁴

¹⁵⁷ See DCRT, Transmission Owner Tariff (2.0.0), § 5; DCRT, Transmission Owner Tariff, app. I (TRR and TRBAA) (2.0.0).

¹⁵⁸ 18 C.F.R. § 35.2(b) (2025).

¹⁵⁹ *Pac. Gas & Elec. Co.*, 306 F.3d at 1116.

¹⁶⁰ *Id.* at 1114-16.

¹⁶¹ *Fern Solar LLC*, 190 FERC ¶ 61,133 at P 5 (2025).

¹⁶² *Id.* P 3.

¹⁶³ *Id.* P 22.

¹⁶⁴ *Id.*

48. Here, like for the reactive power providers in *Fern Solar*, CAISO's Tariff provides that each PTO must develop a revenue requirement, which CAISO then uses to determine the portion of the Access Charge to which each PTO is entitled.¹⁶⁵ Like *Fern*, DCRT was not commercially operational when it submitted its Tariff Records, and thus, as a practical matter, could not provide any transmission service to any customers prior to filing its rate schedule.¹⁶⁶ Accordingly, we continue to find DCRT's Tariff Records constitute an initial rate.¹⁶⁷

49. We further disagree with CAISO that the Tariff Records constitute a change in rate from the APSA.¹⁶⁸ The APSA is not a rate for transmission services provided by the Project. Rather, it is a separate agreement between CAISO and DCRT for "identifying rights and obligations associated with the Project that arise prior to the effective date of [DCRT's] execution of [a] Transmission Control Agreement."¹⁶⁹ While the APSA may contain contractual limits on what DCRT may collect for its TRR, this does not change the fact that the APSA itself does not provide the terms and conditions under which DCRT offers transmission service on the Project.¹⁷⁰

¹⁶⁵ CAISO, CAISO eTariff, app. F (Rate Schedules) (30.0.0), at Schedule 3, §§ 5.2, 10.

¹⁶⁶ Rehearing Order, 194 FERC ¶ 61,085 at P 17 & n.61. Because the Interlocutory Appeal Order was set aside, in its entirety, in the Rehearing Order, Transmission Customers err in continuing to rely on that order's statement that operational status is not determinative. Transmission Customers Rehearing Request at 18 (citing Interlocutory Appeal Order, 191 FERC ¶ 61,212 at P 29).

¹⁶⁷ See also, e.g., *Mammoth N. LLC*, 187 FERC ¶ 61,220, at P 1 n.5 (2024) (noting that applicant "is a new seller that has not previously provided reactive power services to PJM and has no prior transactions and no prior customers") (citing *Chehalis Power Generating, L.P.*, 152 FERC ¶ 61,050 at P 14 ("In order for a rate to be considered an initial rate, it must provide for a new service to a new customer")); *Madison Fields Solar Project, LLC*, 185 FERC ¶ 61,183, at P 1 n.5 (2023) (same).

¹⁶⁸ The Commission, contrary to CAISO's argument, has concluded that the "rate in question is an initial rate" and once it did so it "explicitly initiated an FPA section 206 proceeding." CAISO Rehearing Request at 55. That the Commission did not do so in the Hearing Order or Consolidation Order but did so in the Rehearing Order is a distinction without a difference.

¹⁶⁹ DCRT June 30, 2023 Supplemental Filing, Ex. No. DCRT-2 at DCRT2_00005. Moreover, DCRT's Tariff Records do not change the substance of the APSA.

¹⁷⁰ In *Trans Bay*, the Commission similarly found *Trans Bay's* TRR to be an initial

50. Finally, CAISO's arguments relying on the court's decision in *Middle South Energy, Inc. v. FERC*,¹⁷¹ are unpersuasive—indeed, they are non sequiturs. That the Commission has authority under FPA section 205 to issue refunds where changed rates result in rate increases does not speak to whether the Tariff Records are initial or changed rates. Likewise, that the Commission has expertise in assessing whether a rate is an initial or changed rate does not preclude the Commission from altering its conclusion upon further consideration, as it did in the Rehearing Order.

3. Consideration of Startrans IO, LLC (Startrans)

a. Rehearing Request

51. Transmission Customers argue that the Commission's decision in the Rehearing Order is contrary to Commission precedent that a newly-formed company making a rate filing for the same service that an affiliate already provides is not providing a new service to new customers, and the filing is treated as a changed rate.¹⁷² Transmission Customers allege that DCRT's parent company Lotus Infrastructure, LLC also owns Startrans, an existing CAISO PTO with costs recovered from CAISO customers through the CAISO TAC.¹⁷³ Transmission Customers argue that allowing Lotus and DCRT to circumvent the consumer protections accompanying a changed rate filing by using a new corporate

rate, despite recognizing that Trans Bay had previously filed an Operating Memorandum with the Commission that “set forth the rate principles and operational responsibilities by which Trans Bay [and the other parties to the project would] pursue development, financing, construction and operation of the [p]roject.” *Trans Bay*, 132 FERC ¶ 61,083 at PP 3, 25.

¹⁷¹ See CAISO Rehearing Request at 50-51.

¹⁷² Transmission Customers Rehearing Request at 21 (citing *Middle S. Energy, Inc.*, 31 FERC at 61,627 (“The fact that the utilities have chosen, for financing purposes, to create a new corporate affiliate to provide the service is insufficient to change the fact that the filing at issue constitutes a change in rates and service to the established customers of the owner affiliates.”); *AEP Generating Co.*, 32 FERC ¶ 61,109 (1985)).

¹⁷³ *Id.* (citing June 2023 Filing, Ex. DCRT-1 (Direct Testimony of Ali Amirali) at 1:6-2:5).

entity to develop the project would “allow form to triumph over substance,”¹⁷⁴ and that the FPA “cannot be read to countenance that result.”¹⁷⁵

b. Commission Determination

52. We are not persuaded by Transmission Customers’ argument that treating the Tariff Records as an initial rate is contrary to our precedent on rate filings by affiliated companies. Both *Middle South* and *AEP* concerned intra-corporate power sales agreements. And in both cases, the tariff at issue provided for the sale of energy and capacity from a newly-created corporate entity to affiliated utility companies.¹⁷⁶ In *AEP*, the Commission noted that “in light of the intra-corporate nature of the unit power sale agreement and the history of the unit involved” in *Middle South*, the Commission was “not presented with a bona fide filing by a utility providing a new service to new customers.”¹⁷⁷ Rather, it “found that the unit power sales agreement supplemented or superseded the coordination agreements among the Middle South utilities.”¹⁷⁸ Here, in contrast, DCRT’s Tariff Records do not supplement existing intra-corporate sales agreements, but provide a revenue requirement for the use of its transmission system by unaffiliated entities—CAISO and CAISO customers.¹⁷⁹ In these circumstances, the Commission is presented with a bona fide filing by a utility providing a new service to new customers.

¹⁷⁴ *Id.* at 21-22 (quoting *Middle S. Energy, Inc.*, 31 FERC at 61,627).

¹⁷⁵ *Id.* (quoting *Fla. Power & Light Co.*, 617 F.2d at 815).

¹⁷⁶ See *Middle S. Energy, Inc.*, 31 FERC at 61,624; *AEP Generating Co.*, 32 FERC at 61,297 (“Because of the similarity in organization and operation between the affiliated companies in both the AEP and Middle South systems, and because both proceedings involve the addition of capacity and power by a new affiliated company into existing intra-corporate power arrangements, we find that the recent decision in *Middle South Energy, Inc.* should be controlling here.”).

¹⁷⁷ *AEP Generating Co.*, 32 FERC at 61,297.

¹⁷⁸ *Id.*

¹⁷⁹ DCRT, Transmission Owner Tariff (2.0.0), at § 3.2.

4. Consumer Protection Interests

a. Rehearing Requests

53. Transmission Customers contend that treating DCRT's Tariff Records as an initial rate is contrary to the Commission's policy of "[t]aking a broad view as to what constitutes a change in rate . . . to protect consumers of electricity from excessive or exploitative rates."¹⁸⁰ Transmission Customers argue that by changing course in the Rehearing Order and treating the Tariff Records as an initial rate, the Commission harmed consumers by making it impossible for the Commission to issue a decision on the proceedings during the FPA section 206 refund window.¹⁸¹ Transmission Customers also argue that the Rehearing Order undermines the intent of the APSA between CAISO and DCRT.¹⁸² Further, Transmission Customers contend that the Rehearing Order undermines the Commission's stated goals for competitive project solicitation of facilitating cost savings for ratepayers and placing nonincumbent transmission developers on a level playing field with incumbent transmission owners.¹⁸³ Specifically, Transmission Customers argue that the Rehearing Order treats DCRT differently than incumbent CAISO PTOs to the detriment of ratepayers.¹⁸⁴

54. CAISO similarly argues that the FPA is a consumer protection statute and that by treating DCRT's Tariff Records as a changed rate subject to the Commission's suspension and refund authority, the Commission in the Hearing Order effectuated the policies of the FPA.¹⁸⁵ Treating the Tariff Records as an initial rate, CAISO avers, is "in direct opposition to the main purpose of the FPA" because it limits the Commission's refund authority and shifts the burden of proof.¹⁸⁶ CAISO argues that this is a case where

¹⁸⁰ Transmission Customers Rehearing Request at 22 (quoting *Sw. Elec. Power Co.*, 39 FERC at 61,293).

¹⁸¹ *Id.* at 22-23.

¹⁸² *Id.* at 23 (citing DCRT June 30, 2023 Supplemental Filing, Ex. No. DCRT-2 (APSA), § 10.1).

¹⁸³ *Id.* at 23-24 (citing *Transource Wis., LLC*, 149 FERC ¶ 61,180 (2014), *order on reh'g*, 154 FERC ¶ 61,010 (2016)).

¹⁸⁴ *Id.* at 24.

¹⁸⁵ See CAISO Rehearing Request at 63-64.

¹⁸⁶ *Id.* at 64-65 (arguing that consumers may not be fully protected in light of the statutory fifteen-month refund period under FPA section 206).

consumer interests are paramount because DCRT “is seeking to recover a Base TRR based on capital costs more than double its contractually binding construction cost cap set forth in the APSA.”¹⁸⁷ And CAISO asserts that the result of the Rehearing Order will be that all filings by a new transmission developer to recover its TRR will be treated as an initial rate filing subject to FPA section 206, to the potential detriment of consumers.¹⁸⁸

b. Commission Determination

55. As noted by Transmission Customers, the Commission “tak[es] a broad view as to what constitutes a change in rate” in order “to protect consumers of electricity from excessive or exploitative rates.”¹⁸⁹ Taking a “broad view” of what constitutes a change in rate, however, does not mean that every rate filing becomes a change in rate, as the distinction between initial and changed rates is engrained into FPA section 205.¹⁹⁰ Rather, this broad view of what constitutes a change in rate is implemented through our precedent in *Southwestern Electric Power Co.*, which defines initial rate filings as those “which provide[] for a new service to a new customer” and requires that “both the service *and* the customer must be new.”¹⁹¹ Here, as noted in the Rehearing Order, DCRT’s Project was not operational either when DCRT first submitted its Tariff Records or when DCRT resubmitted its Tariff Records with a revised effective date.¹⁹² Consequently, DCRT could not, as a practical matter, have been offering an existing service, nor could it have served existing customers.¹⁹³

56. Having found that DCRT’s Tariff Records fall within the Commission’s definition of an initial rate, we disagree with Transmission Customers’ and CAISO’s arguments that we should depart from our precedent and find the Tariff Records to be a changed rate due to policy concerns.¹⁹⁴ Our decision reflects both the requirement that we give reasonable

¹⁸⁷ *Id.* at 65.

¹⁸⁸ *See id.* at 66-67.

¹⁸⁹ *Sw. Elec. Power Co.*, 39 FERC at 61,293.

¹⁹⁰ *See Middle S. Energy, Inc.*, 747 F.2d at 768-70.

¹⁹¹ *Sw. Elec. Power Co.*, 39 FERC at 61,293.

¹⁹² Rehearing Order, 194 FERC ¶ 61,085 at P 17 (citing Hearing Order, 184 FERC ¶ 61,199 at P 2; Consolidation Order, 187 FERC ¶ 61,057 at P 4).

¹⁹³ *Id.*

¹⁹⁴ *See FERC v. Elec. Power Supply Ass’n*, 577 U.S. 260, 295 (2016) (explaining that “[t]he Commission, not this or any other court, regulates electricity rates,” which can

effect to the statutory distinction between initial and changed rates,¹⁹⁵ and our obligation to follow Commission precedent defining what constitutes an initial rate.

F. Refund Period

1. Rehearing Requests

57. Transmission Customers argue that the Commission should grant rehearing to take additional action under FPA section 309 to “make the parties whole.”¹⁹⁶ Transmission Customers contend that at a minimum this would entail weighing the equities and (1) ordering full refunds for the entire period from DCRT’s filing up until the date of the Rehearing Order and (2) establishing an FPA section 206 proceeding with a refund effective date of January 30, 2026, the date of the rehearing order.¹⁹⁷ They argue that when the Commission has committed legal error, “the proper remedy is one that puts the parties in the position they would have been in had the error not been made.”¹⁹⁸ Transmission Customers allege that, as compared to the Commission’s approach in the Rehearing Order, their proposed section 309 remedy more reasonably balances the equities and approximates the positions the parties would have been in had the Commission not committed legal error in the Hearing Order.¹⁹⁹ In particular, they argue that if the Commission had treated the Tariff Records as an initial rate from the outset, it would have established a section 206 proceeding before settlement and hearing procedures commenced, and the Transmission Customers would have had notice of the fifteen-month refund period limitation while engaging in settlement discussions.²⁰⁰ Transmission Customers allege that the Rehearing Order does not put them in this same

entail both technical understanding and policy judgment, and as to which the court will defer so long as the Commission engages in reasoned decisionmaking); *B&J Oil & Gas v. FERC*, 353 F.3d 71, 76 (D.C. Cir. 2004).

¹⁹⁵ See *Middle S. Energy, Inc.*, 747 F.2d at 771 (quoting *Fla. Power & Light Co.*, 617 F.2d at 815).

¹⁹⁶ Transmission Customers Rehearing Request at 24 (quoting Rehearing Order, 194 FERC ¶ 61,085 at P 20 n.65 (citations omitted)).

¹⁹⁷ *Id.* at 30-31.

¹⁹⁸ *Id.* at 30 (quoting *Off. of Consumers’ Couns. v. FERC*, 826 F.2d 1136, 1130 (D.C. Cir. 1987)).

¹⁹⁹ *Id.* at 31.

²⁰⁰ *Id.* at 31-32.

position, as it retroactively establishes a section 206 refund window that has already expired, preventing Transmission Customers from attempting to resolve the proceedings prior to the end of the refund window.²⁰¹ Transmission Customers argue that the Rehearing Order effectively punishes ratepayers for the time the parties spent engaging in settlement discussions, which were encouraged by the Hearing Order and during which Transmission Customers had no notice that the Commission's Hearing Order would be later revisited.²⁰² Transmission Customers argue that the equities weigh especially heavily in favor of greater relief here because the party that stands to benefit from the retroactive change—DCRT—is the same party that failed to take timely action to correct the Commission's legal error (by not seeking rehearing of the Hearing Order or earlier arguing that the filing should proceed under section 206).²⁰³

58. Alternatively, Transmission Customers argue the Commission should use its authority under FPA section 206 to extend the fifteen-month window due to dilatory behavior by DCRT.²⁰⁴ FPA section 206(b) provides that “if the Commission determines at the conclusion of the proceeding that the proceeding was not resolved within the fifteen-month period primarily because of dilatory behavior by the public utility, the Commission may order refunds of any or all amounts paid for the period subsequent to the refund effective date and prior to the conclusion of the proceeding.”²⁰⁵ Transmission Customers argue that this does not require nefarious behavior or misconduct.²⁰⁶

59. Transmission Customers allege that DCRT's actions and inactions in this proceeding constitute dilatory behavior because DCRT chose to follow a slower procedural channel (raising the initial versus changed rate distinction during the hearing) when a faster legal channel was available on the same legal question by timely seeking rehearing on the Hearing Order.²⁰⁷ Transmission Customers contend that if DCRT had timely requested rehearing of the Hearing Order, the Commission would have been required to address the initial versus changed rate question at the outset, and the parties

²⁰¹ *Id.* at 32.

²⁰² *Id.* (citing Hearing Order, 184 FERC ¶ 61,199 at P 41).

²⁰³ *Id.*

²⁰⁴ *Id.* at 34

²⁰⁵ 16 U.S.C. § 824e(b).

²⁰⁶ Transmission Customers Rehearing Request at 33-34.

²⁰⁷ *Id.* at 34.

would have had a refund effective date with a meaningful fifteen-month window.²⁰⁸ Transmission Customers argue that extending the refund period under section 206(b) would ensure that customers are kept whole, consistent with Congressional and Commission intent to provide maximum refund protection to customers.²⁰⁹

2. Commission Determination

60. We decline to modify the effective date and refund periods established in the Rehearing Order. Transmission Customers request to issue refunds for the entire period from the filing of the Tariff Records up to the date of the Rehearing Order and for an additional fifteen months from the date of the Rehearing Order. FPA section 206 allows the Commission to “order refunds of any amounts paid, for the period subsequent to the refund effective date through a date fifteen months after such refund effective date.”²¹⁰ FPA section 309 provides that “[t]he Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter.”²¹¹ While the Commission has broad authority under section 309 “to ‘remedy its errors’ and correct unjust situations,”²¹² section 309 “is designed to fill in gaps where the FPA is silent, not to rewrite the explicit congressional delegations of authority and explicit limitations on that authority.”²¹³ Accordingly, the Commission’s authority under FPA sections 206(b) and 309 is not unlimited, as the Commission must act within the statute’s prescribed bounds, as it has on the facts of this case. Transmission Customers’ request that they receive refunds from the date of the filing of the Tariff Records through January 30, 2026, plus an additional fifteen months thereafter, would effectively create a

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 35 (citing S. REP. No. 100-491, 5-6 (1988) (“The Committee intends the Commission to exercise its refund authority under section 206 in a manner that furthers the long-term objective of achieving the lowest cost for consumers consistent with the maintenance of safe and reliable service.”); Rehearing Order, 194 FERC ¶ 61,085 at P 20).

²¹⁰ 16 U.S.C. § 824e(b).

²¹¹ 16 U.S.C. § 825h.

²¹² *TNA Merch. Projects, Inc.*, 857 F.3d at 359 (quoting *Xcel Energy Servs. Inc. v. FERC*, 815 F.3d 947, 956 (D.C. Cir. 2016)).

²¹³ *S.D. Gas & Elec. Co.*, 96 FERC ¶ 61,120, at 61,509 (2001); *see also TNA Merch. Projects*, 857 F.3d at 359 (“[Section] 309 cannot be used to supersede specific statutory strictures.”).

refund period for a single section 206 proceeding that greatly exceeds the fifteen months permitted by section 206(b).²¹⁴ This request is therefore beyond our authority.²¹⁵

61. Transmission Customers' alternative request that we extend the refund period beyond the expiration of fifteen months due to alleged dilatory behavior by DCRT is premature. Section 206(b) states that "if the proceeding is not concluded within fifteen months after the refund effective date and if the Commission determines *at the conclusion of the proceeding* that the proceeding was not resolved within the fifteen-month period primarily because of dilatory behavior by the public utility, the Commission may order refunds of any or all amounts paid for the period subsequent to the refund effective date and prior to the conclusion of the proceeding."²¹⁶ Here, the section 206 proceeding regarding the Tariff Records has not concluded. Accordingly, we make no determination on whether section 206's provision on dilatory behavior applies in this case.

G. Burden of Proof

1. Rehearing Requests

62. ETCC argues that the Commission erred in relying on the distinction between an initial and changed rate as a means of changing the burden of proof for the Tariff Records, given their relation to a competitively-procured transmission project with contractual cost containment.²¹⁷ ETCC contends that in the APSA, DCRT agreed that it "shall not seek" Commission approval of rates in excess of its contractual cost.²¹⁸ ETCC argues that DCRT should therefore bear the burden under section 205 of proving that any claimed exception to the contractual cost cap is applicable. According to ETCC, the precedent the Commission relies on for determining whether the Tariff Records are an initial or changed rate does not dictate the burden of proof to this case, as none of the

²¹⁴ Indeed, the effect of Transmission Customers' request is that, notwithstanding that we have concluded that DCRT's Tariff Records are an initial rate, we should—for the period prior to the Rehearing Order—perpetuate the erroneous suspension of those rates in the Hearing Order, effectively continuing to treat them as a changed rate.

²¹⁵ See *Fern Solar*, 190 FERC ¶ 61,133 at P 41.

²¹⁶ 16 U.S.C. § 824e(b) (emphasis added).

²¹⁷ ETCC Rehearing Request at 24.

²¹⁸ *Id.* (quoting APSA § 10.1.1).

precedent the Commission relied on involved competitively-procured transmission and contractual cost commitments.²¹⁹

2. Commission Determination

63. ETCC does not cite any statutory or other legal authority for its argument that the Commission's determination that the Tariff Records constitute an initial rate should not determine the burden of proof in this proceeding. FPA section 205 does not permit the Commission to accept and suspend an initial rate, subject to refund.²²⁰ Upon determining that the Tariff Records constitute an initial rate, the Commission therefore instituted proceedings under section 206 to ensure the availability of refunds in the event that DCRT's TRR is found excessive.²²¹ The hearing regarding DCRT's Tariff Records is now proceeding under section 206. Section 206(b) specifies that "[i]n any proceeding under this section, 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 Commission or the complainant."²²² ETCC is therefore incorrect that the fact that DCRT was selected to develop the Project through a competitive procurement process and entered into contractual cost commitments is relevant to assignment of the burden of proof.²²³

H. Reliance Interests

1. Rehearing Requests

64. Transmission Customers argue that even if the Commission continues to find that DCRT's Tariff Records constitute an initial rate, the Commission should grant rehearing to find that its allegedly changed policy on initial versus changed rates should be applied only prospectively, and not to these proceedings.²²⁴ Transmission Customers admit that the Commission may reassess its policies in adjudicatory proceedings, but argue that the

²¹⁹ *Id.* at 25.

²²⁰ *Middle S. Energy, Inc.*, 747 F.2d at 772; 16 U.S.C. § 824d(e).

²²¹ Rehearing Order, 194 FERC ¶ 61,085 at PP 14, 18.

²²² 16 U.S.C. § 824e(b).

²²³ Our decision on this point goes to the *assignment* of the burden of proof, but does not address the *evidentiary value* of DCRT's contractual cost commitments or the competitive procurement process for purposes of satisfying the burden of proof.

²²⁴ Transmission Customers Rehearing Request at 24-30.

Commission must consider equitable considerations in deciding whether any new or changed policy should be applied retroactively to the proceeding in which it is announced.²²⁵ They contend that in past instances where the Commission has changed policy in a way that affected whether a utility's filing was properly categorized as an initial or changed rate, the Commission has applied the impacts of that change only prospectively.²²⁶ Transmission Customers argue that in determining whether to apply a new policy retroactively, the Commission must consider "(1) whether the rule is actually a departure from clear prior policy or is, instead, a new policy for a new situation (or a clarification of a prior policy); (2) whether retroactive application will be more likely to hinder than to further the operation of a new rule; and (3) whether retroactive application would produce substantial inequitable results, with particular reference to whether parties relied on the old standard."²²⁷

65. Transmission Customers contend that each of these factors weighs against retroactive application. First, Transmission Customers argue that the Commission's initial rate determination in the Rehearing Order is a clear departure from its prior policy because prior to the Rehearing Order, they allege that the Commission consistently treated filings by new PTOs seeking recovery of high voltage TRRs through the CAISO Tariff as changed rates.²²⁸ Transmission Customers contend that nothing distinguishes DCRT's Tariff Records from these prior proceedings for purposes of the Commission's initial rate assessment, and that the Rehearing Order cannot be characterized merely as a clarification of the Commission's existing policy. Second, they argue that limiting the Rehearing Order's initial rate interpretation to future filings would not hinder the further operation of the new rule, as the determination in this case would only impact the burden of proof and refund authority applicable to these consolidated proceedings.²²⁹ Third, Transmission Customers contend that retroactive application of the Rehearing Order's

²²⁵ *Id.* at 26 (citing *Clark-Cowlitz Joint Operating Agency v. FERC*, 826 F.2d 1074, 1081 (D.C. Cir. 1987); *Garfias Rodriguez v. Holder*, 702 F.3d 504, 519 (9th Cir. 2012)).

²²⁶ *Id.* (citing *Chehalis Power Generating, L.P.*, 171 FERC ¶ 61,188 at P 49; *Sw. Elec. Power Co.*, 39 FERC at 61,294-95).

²²⁷ *Id.* at 26-27 (quoting *S.D. Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs. into Mkts. Operated by the Cal. Indep. Sys. Operator Corp.*, 100 FERC ¶ 61,235, at P 3 (2002)).

²²⁸ *Id.* at 25, 27 (citing *MidAm. Transco Cent. Cal. Transco, LLC*, 147 FERC ¶ 61,179; *DesertLink, LLC*, 158 FERC ¶ 62,189; *NextEra Energy Transmission W. LLC, LLC*, 154 FERC ¶ 61,009).

²²⁹ *Id.* at 28.

initial rate determination would be manifestly unjust given the parties' reliance on prior Commission decisions asserting section 205 authority over filings like the Tariff Records, including in the Hearing Order.²³⁰ Transmission Customers contend that they reasonably and detrimentally relied on that precedent when engaging in good faith settlement negotiations for a period of eighteen months, and had they known that the Commission would assert that section 205 does not apply, they would not have engaged in lengthy settlement discussions that exceeded the fifteen month section 206 statutory refund period.²³¹ Transmission Customers further contend that CAISO and CAISO market participants materially relied on the Commission's prior practice of asserting FPA section 205 authority over new PTO filings seeking recovery under the CAISO Tariff. Transmission Customers contend that CAISO may have made different selections in past competitive solicitation processes and contracted in reliance on the Commission's prior policy.²³²

66. CAISO similarly argues that the Commission should grant rehearing based on the reasonable and detrimental reliance of ratepayers, Trial Staff, CAISO, and other participants in these proceedings during the period in which the hearing proceeded under the premise that DCRT bore the burden of proof under FPA section 205.²³³ According to CAISO, the Commission was required to consider the disruptive impact of treating the Tariff Records as an initial rate in these proceedings.²³⁴ CAISO contends that had the intervenors known that customers were limited to a fifteen-month refund period, they would have insisted on commencing hearing procedures immediately and not spent eighteen months on ultimately fruitless settlement negotiations.²³⁵

2. Commission Determination

67. The Commission's determination that the Tariff Records constitute an initial rate is not a change in policy but, as discussed in the Rehearing Order and above, is an application of the Commission's precedent and the FPA. Upon recognizing that the Tariff Records are an initial rate, the Commission has no statutory authority to suspend

²³⁰ *Id.*

²³¹ *Id.* at 28-29.

²³² *Id.* at 29 (citing CAISO Interlocutory Appeal Comments at 15, 17).

²³³ CAISO Rehearing Request at 70-73.

²³⁴ *Id.* at 70.

²³⁵ *Id.* at 73.

the Tariff Records under FPA section 205.²³⁶ We therefore lack authority to grant Transmission Customers' request to apply our holding only prospectively.

68. In the *Chehalis* case cited by Transmission Customers, the Commission was confronted with a different fact pattern, where the Commission found that Chehalis Power Generating, L.P.'s (Chehalis) proposed reactive power rate schedule was a changed rate, as Chehalis had previously been providing the same service without compensation.²³⁷ The Commission held that "Chehalis should have earlier filed a rate schedule for its provision of reactive power service,"²³⁸ but simultaneously "clarifie[d] its policy related to jurisdictional power rate schedules for which there is no compensation, requiring that such rate schedules . . . be filed with the Commission on a prospective basis."²³⁹ The Commission then found that "because [the Commission's] policy is being clarified and we are prospectively providing for the filing of rates, terms and conditions for the provision of reactive power service . . . for which there is no compensation," it was appropriate for Chehalis to recover amounts previously refunded under section 205.²⁴⁰ As the Chehalis rate schedule was a changed rate, the Commission had full statutory authority to decide its course of action under section 205, including whether or not to suspend the rate and whether or not to require refunds.²⁴¹ Here, in contrast, the Tariff Records are an initial rate, such that the Commission has no authority to act under section 205.²⁴² As explained in the Rehearing Order, the Commission has set the refund

²³⁶ *Middle S. Energy, Inc.*, 747 F.2d at 772 ("[S]ection 205 does not give the Commission power to suspend initial rates.").

²³⁷ *Chehalis Power Generating, L.P.*, 145 FERC ¶ 61,052, at P 3 (2013), *order on reh'g*, 152 FERC ¶ 61,050, *aff'd in relevant part, TNA Merch. Projects*, 857 F.3d 354.

²³⁸ *Id.* P 11.

²³⁹ *Id.* P 1.

²⁴⁰ *Id.* P 14.

²⁴¹ 16 U.S.C. § 824d(e) ("the Commission . . . *may* suspend the operation of such schedule") (emphasis added); *id.* ("the Commission *may* by order require the interested public utility" to issue refunds) (emphasis added).

²⁴² *See, e.g., supra* P 55. For the same reason, we are unpersuaded by CAISO's argument that the Commission should reverse the Rehearing Order based on the detrimental reliance of ratepayers, Commission Trial Staff, CAISO, and other participants in these proceedings. *See* CAISO Rehearing Request at 70-73. Given that the Tariff Records are an initial rate, the Commission has no statutory authority to allow proceedings to continue under section 205, regardless of any alleged detrimental reliance.

effective date under FPA section 206 as June 12, 2024, to provide the maximum statutorily available protection to consumers at this time.²⁴³

The Commission orders:

In response to the requests for rehearing, the Rehearing Order is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission. Commissioner Chang is not participating.

(S E A L)

Carlos D. Clay,
Deputy Secretary.

²⁴³ Rehearing Order, 194 FERC ¶ 61,085 at P 20.