

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

DCR Transmission, L.L.C.) **Docket Nos. ER23-2309-____,**
) **ER24-1394-____, and**
) **EL26-34-____**
) **(consolidated)**

**REQUEST FOR REHEARING OF THE CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION**

The California Independent System Operator Corporation (CAISO)¹ respectfully submits this request for rehearing (Request for Rehearing)² of the Federal Energy Regulatory Commission’s (FERC or Commission) Order Addressing Arguments Raised on Rehearing, Setting Aside Prior Order, Instituting Section 206 Proceeding, and Consolidating Proceedings issued in the captioned proceedings on January 30, 2026 (January 2026 Order).³

I. Executive Summary

The Commission should reverse the January 2026 Order because the Commission’s actions in that order exceed its statutory authority, are contrary to well-established precedent, violate the Administrative Procedures Act, and improperly harm ratepayers whose interests the Commission is obligated to protect under the Federal Power Act. The January 2026 Order erred by

¹ Capitalized terms not otherwise defined herein have the meanings set forth in the Master Definitions Supplement, Appendix A to the CAISO Tariff.

² The CAISO submits this Request for Rehearing pursuant to Section 313(a) of the Federal Power Act (FPA), 16 U.S.C. § 824l(a), and Rule 713 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.713.

³ *DCR Transmission, L.L.C.*, 194 FERC ¶ 61,085 (2026).

modifying and setting aside the Order on Interlocutory Appeal issued in these proceedings on June 20, 2025 (June 2025 Order).⁴

These consolidated proceedings involve the proposed Transmission Owner Tariff (TO Tariff) and annual Base Transmission Revenue Requirement (TRR) (together, Tariff Records) for the Ten West Link Transmission Project (Project) that DCR Transmission, L.L.C. (DCRT) filed pursuant to section 205 of the FPA⁵ to initiate these proceedings.⁶ The June 2025 Order properly found that DCRT's proposed Tariff Records constitute a change in rate—a rate increase—and thus DCRT carries the burden of proof under FPA section 205 to show its Tariff Records are just and reasonable.⁷

In the June 2025 Order the Commission was merely making “explicit” and thereby “clarify[ing]”⁸ the findings the Commission already had made as to the Tariff Records in its initial order issued in these proceedings on September 29, 2023, the Order Accepting and Suspending Proposed Transmission Owner Tariff and Transmission Revenue Requirement, Subject to Refund, and Establishing Hearing and Settlement Judge Procedures (September 2023 Hearing Order).⁹ The September 2023 Hearing Order can only be read to find that the proposed

⁴ *DCR Transmission, L.L.C.*, 191 FERC ¶ 61,212 (2025). See January 2026 Order at P 2.

⁵ 16 U.S.C. § 824d.

⁶ This Request for Rehearing refers to DCRT's initial filing in the proceeding as the Tariff Records Filing.

⁷ FPA section 205(e) states in relevant part that “[a]t any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the public utility.” 16 U.S.C. § 824d(e).

⁸ June 2025 Order at P 28.

⁹ *DCR Transmission, L.L.C.*, 184 FERC ¶ 61,199 (2023).

Tariff Records are a change in rate. All evidence on the face of the September 2023 Hearing Order supports the conclusion the Commission found therein that the Tariff Records are a change in rate. If the September 2023 Hearing Order left open even the possibility that the Tariff Records were an initial rate, the Commission's exercise of its suspension and refund authority as to the Tariff Records in that order would have been inconsistent with four decades of precedent finding that the Commission lacks the authority to suspend initial rate filings.¹⁰ Because the September 2023 Hearing Order can only be read as treating the proposed Tariff Records as a change in rate, the January 2026 Order erred by modifying and setting aside foundational findings in the September 2023 Hearing Order.

As the June 2025 Order recognized, because no party sought rehearing of the September 2023 Hearing Order, it became a final and non-appealable decision as to the Commission's determinations in that order to accept and suspend the rates under section 205, make the rates subject to refund, and set the matter for hearing and settlement judge procedures¹¹—all of which became final more than two years prior to the January 2026 Order. As a final decision, the Commission is barred from modifying and setting aside the findings in the

¹⁰ As explained in this Request for Rehearing, the Commission issued the June 2025 Order to address erroneous findings made by the Presiding Judge for the hearing the September 2023 Hearing Order authorized. The Presiding Judge was not permitted to reopen the findings in the September 2023 Hearing Order that the Tariff Records are a change in rate and thus the burden of proof is on DCRT under FPA section 205. The hearing began on January 13, 2026, but is currently in recess until April 8, 2026, pursuant to the Presiding Judge's approval of a request by the participants to revise the procedural schedule following the issuance of the January 2026 Order.

¹¹ See June 2025 Order at PP 3, 28.

September 2023 Hearing Order by section 313(a) of the FPA¹² and related federal court precedent. The Commission confirmed this in the June 2025 Order when it found that the September 2023 Hearing Order was “final” as to the issue of the Commission’s determination to accept and suspend the Tariff Records under FPA section 205—something the Commission is only authorized to do for a change in rate.¹³ Unlike the January 2026 Order, the June 2025 Order did not modify or set aside the September 2023 Hearing Order but instead merely clarified it.

The January 2026 Order also is contrary to precedent issued by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) confirming “the TRR of each participating transmission owner can be conceptualized not as its own rate but rather as a cost of the CAISO.”¹⁴ The D.C. Circuit’s conclusion is fully supported by the record in these proceedings. As the June 2025 Order explained, the evidence in these proceedings indicates the Tariff Records are a change in rate because they involve neither a new service nor new customers, which means the Tariff Records are not an initial rate under the Commission’s longstanding two-part *SWEPCO* test for distinguishing an

¹² FPA Section 313(a) states in relevant part that “[u]ntil the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b) [of FPA Section 313], 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.” 16 U.S.C. § 825/(a).

¹³ June 2025 Order at P 28.

¹⁴ *Pac. Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1116 (D.C. Cir. 2002) (citation omitted) (*PG&E v. FERC*).

initial rate from a change in rate.¹⁵ Instead, as the June 2025 Order concluded, “[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 TAC [Transmission Access Charge]” under the CAISO Tariff.¹⁶ As a result, “DCRT’s Tariff Records [are] a change in rate, consistent with the Commission’s longstanding precedent.”¹⁷ The Commission was correct in being unpersuaded by DCRT’s contention that the Commission’s *Trans Bay* case “involved substantially similar procedural facts to those presented here” and meant the Tariff Records are an initial rate.¹⁸

Furthermore, the January 2026 Order is contrary to the Commission’s obligations to consumers. The January 2026 Order instituted a proceeding pursuant to FPA section 206 (Docket No. EL26-34), establishing a refund effective date of June 12, 2024, and consolidating the preexisting dockets for the proceeding (Docket Nos. ER23-2309 and ER24-1394) with new Docket No. EL26-34.¹⁹ The practical implications of these actions are dramatic. Three weeks into a hearing premised on the findings and burden of proof established in

¹⁵ June 2025 Order at PP 26-27, 29 (citing *Sw. Elec. Power Co.*, 39 FERC ¶ 61,099, at 61,293 (1987)) (*SWEPCO*).

¹⁶ June 2025 Order at P 30.

¹⁷ *Id.* (citing nine previous Commission orders).

¹⁸ See *id.* at P 14 (citing *Trans Bay Cable, LLC*, 129 FERC ¶ 61,225 (2009) (*Trans Bay I*), *order on reh’g*, 132 FERC ¶ 61,083 (2010) (*Trans Bay II*) (together, *Trans Bay*)); June 2025 Order at PP 26-31.

¹⁹ January 2026 Order at PP 18-20.

the September 2023 Hearing Order—as confirmed in the June 2025 Order—the January 2026 Order upended the case and shifted the burden of proof onto ratepayers, Commission Trial Staff, and the CAISO to demonstrate under FPA section 206 that DCRT’s proposed Base TRR is unjust and unreasonable.

Moreover, the Commission’s actions in the January 2026 Order directly deprived ratepayers of statutory refund protection. Section 206 of the FPA expressly only provides fifteen months of refund protection to ratepayers. Absent action by the Commission under FPA section 309 to extend that refund period the statutory refund protection expired in September 2025—fifteen months after the June 2024 refund effective date established in the January 2026 Order. Intervenors in this proceeding detrimentally relied on the Commission’s section 205 actions in its September 2023 Hearing Order and engaged in eighteen months of settlement negotiations with DCRT in an attempt to resolve the issues before the matter was even referred to a hearing judge. Had intervenors known the clock was ticking on their ability to obtain refunds from the excessive rates DCRT proposed because it was a section 206 proceeding not a section 205 proceeding, they would have insisted on commencing hearing procedures immediately and not expended a year and a half on fruitless settlement discussions.

The Commission offered no explanation in the January 2026 Order why it felt the need to take the extraordinary step of changing the burden of proof *after the hearing had already commenced* and after DCRT was provided the opportunity to file both direct and rebuttal testimony because DCRT had the

burden of proof up until the moment the Commission issued the January 2026 Order. The result was that intervenors only had the opportunity to file answering testimony to DCRT's direct testimony because they did not have the burden of proof. The flipping of the burden of proof is further exacerbated by the potential that any refund protection in these proceedings will be limited to fifteen months under FPA section 206.

The actions in the January 2026 Order cannot be reconciled with the Commission's explanation in the June 2025 Order that, under existing precedent, the Commission draws the boundary between "initial" and "changed" rates "with an eye toward protecting consumers from excessive or exploitative rates, in keeping with Congressional intent."²⁰ Even assuming, solely for the sake of argument, there were any ambiguity on these matters stemming from the September 2023 Hearing Order, such an ambiguity should be resolved by finding the September 2023 Hearing Order determined DCRT proposed a change to its existing rate rather than that DCRT proposed an initial rate. That is the only way to apply a consumer protection statute like the FPA and satisfy the Commission's fundamental obligation to ensure the availability of energy to customers at a reasonable cost, given DCRT is seeking to recover a Base TRR based on capital costs more than double its contractually binding construction cost cap of approximately \$259 million set forth in the existing Approved Project Sponsor Agreement (APSA) between DCRT and the CAISO. Moreover, following the

²⁰ June 2025 Order at P 27 (citing *Westar Generating, Inc.*, 95 FERC ¶ 61,137, at 61,430 (2001)); *SWEPCO*, 39 FERC at 61,293).

expansive approach to identifying what constitutes an initial rate filing adopted in the January 2026 Order would run contrary to the broadened definition of a change in rate the Commission has employed over the nearly forty years since *SWEPCO* was issued and would be inconsistent with the objective of Order No. 1000 to reduce rates by enhancing competition in transmission development.

The Commission should have maintained the findings made and procedures established in the September 2023 Hearing Order and left unchanged in the June 2025 Order, instead of modifying and setting aside those earlier orders. The January 2026 Order's reliance on *Trans Bay* was misplaced, because it ignored significant factual differences between *Trans Bay* and the instant DCRT proceeding and also ignored the bulk of precedent indicating the Commission routinely treats initial submissions of a Transmission Revenue Requirement by a new CAISO Participating Transmission Owner under a Transmission Owner Tariff as a changed rate. That describes DCRT's situation.

The refund effective date the January 2026 Order established will not provide the protection for consumers from excessive or exploitative rates provided by the directives in the September 2023 Hearing Order and the June 2025 Order as to refunds. Furthermore, if the January 2026 Order is allowed to stand, it will have a chilling effect on the CAISO's competitive solicitation process and stifle competition in transmission development. The end result will be the CAISO and other independent system operators (ISOs) and regional transmission organizations (RTOs) with competitive transmission processes will have a strong incentive not to award projects to any entity proposing cost

containment measures and that would need to file what would now be considered to be an initial rate, thus thwarting the Commission's competition goals and depriving ratepayers of a primary benefit of competition in transmission development.

The Commission should grant this Request for Rehearing, reverse the January 2026 Order, and reinstitute the correct findings and procedures found in the Commission's September 2023 Hearing Order and June 2025 Order.

II. Background

A. Initiation of the DCRT Proceedings

The CAISO selected DCRT in a competitive solicitation as part of the CAISO's 2013-2014 Transmission Planning Process to be the Approved Project Sponsor to build the Project, due to its lower projected revenue requirements and commitment to binding cost cap and capital cost containment measures.²¹ On June 30, 2023, DCRT filed its proposed TO Tariff and Base TRR for the Project in Docket No. ER23-2309-000,²² pursuant to FPA section 205 and purportedly pursuant to Section 35.12 of the Commission's regulations.²³ DCRT's Tariff Records Filing also stated the proposed Base TRR "is consistent with DCRT's obligations under DCRT's December 1, 2015 Approved Project Sponsor Agreement ('Original APSA') with the CAISO," as subsequently amended (DCRT

²¹ CAISO, *Delaney-Colorado River Transmission Line Project, Project Sponsor Selection Report*, at 102, 131 (July 10, 2015), available at <https://www.caiso.com/documents/delaneycoloradorivertransmissionlineproject-projectsponsorselectionreport.pdf>. The Project was formerly called the Delaney-Colorado River Project.

²² DCRT later supplemented this Tariff Records Filing on July 3 and August 18, 2023.

²³ 18 C.F.R. § 35.12. See transmittal letter for Tariff Records Filing at 1; see also *infra* Section IV.A of this Request for Rehearing (discussing Section 35.12 of the regulations).

APSA).²⁴ The Tariff Records Filing indicated DCRT sought to recover a Base TRR based on capital costs more than double the construction cost cap set forth in the DCRT APSA.²⁵

At the time DCRT submitted the Tariff Records Filing, its expected commercial operation date for the Project was March 8, 2024, at which point DCRT would become a participating transmission owner in the CAISO. Therefore, DCRT requested a March 8, 2024, effective date for its proposed TO Tariff and Base TRR.²⁶ The CAISO and other intervenors filed motions to intervene, comments, and protests regarding the Tariff Records Filing.

On September 29, 2023, the Commission issued the September 2023 Hearing Order, which accepted DCRT's proposed Tariff Records and suspended them for a nominal period, to become effective March 8, 2024, subject to refund and to the outcome of hearing and settlement judge procedures.²⁷ The Commission took those actions without initiating an FPA section 206 proceeding or establishing an associated EL docket. The September 2023 Hearing Order also recognized "[t]he Base TRR [for the Project] will be collected by CAISO pursuant to the Transmission Access Charge for Regional Transmission Facilities,"²⁸ and did not correct the statements made in comments by multiple intervenors that DCRT bore the burden of proof under FPA section 205 to show

²⁴ Transmittal letter for Tariff Records Filing at 2.

²⁵ *Id.* at 6-7.

²⁶ *Id.* at 48.

²⁷ See September 2023 Hearing Order at PP 1, 40, and Ordering Paragraphs (A)-(E).

²⁸ *Id.* at P 7.

the Tariff Records Filing is just and reasonable.²⁹ No party filed a request for rehearing of the September 2023 Hearing Order, resulting in that order becoming final and non-appealable as to all decisions made therein in October 2023.

On March 4, 2024, again pursuant to FPA section 205, DCRT filed a request in Docket No. ER24-1394-000 to establish an indefinite effective date for the Tariff Records, because the Project would not achieve commercial operation by March 8, 2024. On May 2, 2024 (as corrected on July 31, 2024), the Commission issued an order granting DCRT's request, subject to refund and the outcome of the existing hearing and settlement judge procedures, and consolidating Docket Nos. ER23-2309-000 and ER24-1394-000 (May 2024 Consolidation Order).³⁰ No party filed a request for rehearing of the May 2024 Consolidation Order, resulting in that order becoming final and non-appealable decision as to the Commission's determinations in that order to accept and suspend the rates under section 205. Again, the Commission established no FPA section 206 proceedings or associated EL docket.

On June 6, 2024, DCRT submitted an informational filing in Docket No. ER24-1394-000 to specify an effective date of June 12, 2024, for the proposed Tariff Records. The Project did in fact begin commercial operation on that June 12, 2024, date.

²⁹ *Id.* at P 20.

³⁰ *DCR Transmission, L.L.C.*, Order Granting Request for Revised Effective Date and Consolidating Proceedings, 187 FERC ¶ 61,057 (2024); *DCR Transmission, L.L.C.*, Errata Notice, 188 FERC ¶ 61,092 (2024).

B. The Bench Rulings Order

The participants in Docket Nos. ER23-2309 and ER24-1394 engaged for a year and a half in ultimately unsuccessful efforts at settlement to resolve contested issues in the proceeding, including supporting several recommendations by the settlement judge to continue the settlement process.³¹ The Chief Administrative Law Judge then terminated the settlement judge procedures and designated Judge Joel deJesus as the Presiding Judge for the purpose of conducting a hearing and issuing an initial decision in the case.³²

At a prehearing conference held on May 8, 2025, more than a year and a half after the September 2023 Hearing Order became a final and non-appealable decision as to the Commission's determinations to accept and suspend the Tariff Records under section 205, the Presiding Judge *sua sponte* set for briefing and oral argument the issues of whether the Tariff Records Filing was an "initial rate filing" under FPA section 205(e) and whether there was any authority to treat an initial rate filing as if it were a rate change filing. On May 14, 2025, the Presiding Judge issued a written order to the same effect.³³

The CAISO, other parties, and Commission Trial Staff briefed the issue. DCRT, which had not sought rehearing of the September 2023 Hearing Order,

³¹ See *DCR Transmission, L.L.C.*, Order of Chief Judge Designating Settlement Judge, Docket No. ER23-2309-000 (Oct. 6, 2023); *DCR Transmission, L.L.C.*, Final Report of Settlement Judge, Docket No. ER23-2309-000 (Apr. 1, 2025).

³² *DCR Transmission, L.L.C.*, Order of Chief Judge Terminating Settlement Judge Procedures, Designating Presiding Administrative Law Judge and Establishing Track II Procedural Time Standards, Docket Nos. ER23-2309-000 and ER23-2309-001 (Apr. 2, 2025) (as corrected May 7, 2025). The May 7, 2025 errata order stated the Presiding Judge would conduct the hearing in Docket Nos. ER23-2309-001 and ER24-1394-001.

³³ *DCR Transmission, L.L.C.*, Order Directing Briefs and Scheduling Oral Argument, at PP 2-3, Docket Nos. ER23-2309-001 and ER24-1394-001 (May 14, 2025).

claimed its filing was in fact an initial rate filing and the Commission “should have set Docket Nos. ER23-2309-000, ER23-2309-001, to proceed as a FPA section 206 proceeding.”³⁴ The CAISO and every other active participant in these proceedings including Commission Trial Staff explained the Commission had initiated the hearings under FPA section 205 subject to full refund protection and that the Commission had not treated the Tariff Records Filing as an initial rate filing.

Nonetheless, at the oral argument held on May 21, 2025, the Presiding Judge ruled from the bench that the Tariff Records Filing was an initial rate filing and that the burden of proof therefore fell on Commission Trial Staff and those parties challenging that filing. The Presiding Judge also granted oral motions by Commission Trial Staff and several parties for interlocutory appeal of that ruling. On May 22, 2025, the Presiding Judge issued a written order “confirm[ing] those two rulings and set[ting] forth [his] rationale for [his] ruling on burden of proof as required under Rule 715(b)(5) of the Commission’s Rules of Practice and Procedure” (Bench Rulings Order).³⁵

In addition, the Presiding Judge found the Commission did not follow the statutory requirements to initiate an FPA section 206 proceeding in this case and held the Commission “will have to take steps to establish formally a refund

³⁴ Brief of DCR Transmission, L.L.C., Docket Nos. ER23-2309-000, *et al.*, at 11 (May 15, 2025) (DCRT Brief).

³⁵ *DCR Transmission, L.L.C., Order Confirming Bench Rulings, Permitting Interlocutory Appeal, and Transmitting Rule 715(b)(5)(i) Memorandum*, 191 FERC ¶ 63,022, at P 1 (2025). Rule 715(b)(5) states that “[i]f the presiding officer permits appeal, the presiding officer will transmit to the Commission: (i) A memorandum which sets forth the relevant issues and an explanation of the rulings on the issues; and (ii) the participant’s motion under paragraph (b)(1) of this section and any answer permitted to the motion.” 18 C.F.R. § 385.715(b)(5).

effective date and confirm the specific statutory basis of this hearing.”³⁶ Even though the Bench Rulings Order found the Commission had not initiated an FPA section 206 proceeding in the case, the Bench Rulings Order found the Commission and intervenors had an FPA section 206 burden to show DCRT’s attempt to recover excessive costs in its Base TRR was unjust and unreasonable.³⁷

C. The June 2025 Order

The CAISO, other parties, and Commission Trial Staff all filed motions for interlocutory appeal, which the Presiding Judge granted.³⁸ On June 6, 2025, the Commission issued a Notice of Intent to Act on Interlocutory Appeal,³⁹ and on June 20, 2025, it issued the promised order on interlocutory appeal.

The discussion in the June 2025 Order on substantive matters began, “We grant the interlocutory appeal and find that the Presiding Judge erred. We clarify that DCRT’s Tariff Records should be treated as a change in rates.”⁴⁰ Thus, the

³⁶ Bench Rulings Order at P 30; *see also id.* at P 28.

³⁷ *Id.* at P 10. The hearing in these proceedings began on January 13, 2026 but is currently in recess until April 8, 2026, pursuant to the Presiding Judge’s approval of a request by the CAISO and other participants to revise the procedural schedule following the issuance of the January 2026 Order. *See DCR Transmission, L.L.C.*, Order Waiving Answer Period and Amending Procedural Schedule, Docket Nos. ER23-2309-001 and ER24-1394-001 (June 20, 2025); *DCR Transmission, L.L.C.*, Order Waiving Answer Period and Adopting Revised Procedural Schedule, Docket Nos. ER23-2309-001 and ER24-1394-001 (Feb., 5, 2026).

³⁸ Bench Rulings Order at PP 29-33.

³⁹ *DCR Transmission, L.L.C.*, 191 FERC ¶ 61,191 (2025).

⁴⁰ June 2025 Order at P 26.

Commission found DCRT carries the burden of proof under FPA section 205 to show its Tariff Records are just and reasonable.⁴¹

The Commission noted “[t]he FPA does not define ‘initial’ and ‘changed’ rates, leaving the Commission to draw the line between these two types of rates.”⁴² The Commission described its longstanding two-part *SWEPCO* test for determining whether a filing contains an initial rate or a change in rate:

The Commission’s longstanding 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.” Thus, “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.”⁴³

The Commission also stated that “[b]ecause the FPA does not expressly define the terms ‘initial’ and ‘changed’ rates, the Commission has drawn the boundary between the two with an eye toward protecting consumers from excessive or exploitative rates, in keeping with Congressional intent.”⁴⁴

The Commission went on to explain the September 2023 Hearing Order did not set for hearing the issue of whether the Tariff Records were an initial or a

⁴¹ FPA section 205(e) states in relevant part that “[a]t any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the public utility”. 16 U.S.C. § 824d(e).

⁴² June 2025 Order at P 27 (citing *Tri-State Generation & Transmission Ass’n, Inc.*, 173 FERC ¶ 61,174, at P 9 (2020), which itself cites *Fla. Power & Light Co. v. FERC*, 617 F.2d 809, 815 (D.C. Cir. 1980)) (*FP&L*).

⁴³ June 2025 Order at P 27 (quoting *SWEPCO*, 39 FERC at 61,293) (internal citation omitted) (emphasis in original).

⁴⁴ June 2025 Order at P 27 (citing *Westar Generating, Inc.*, 95 FERC at 61,430; *SWEPCO*, 39 FERC at 61,293).

changed rate, and that the September 2023 Hearing Order was a final order as to the actions it took on the Tariff Records pursuant to FPA section 205:

As a preliminary matter, 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, and no party sought rehearing or clarification of the Commission's determination in the Hearing Order to accept and suspend the proposed Tariff Records pursuant to FPA section 205, or the Commission's authority to do so. Moreover, the time for rehearing of any argument that the Commission erred in the Hearing Order has passed. Accordingly, the Hearing Order is final as to that issue. We understand, however, that the Hearing Order was not explicit on whether DCRT's proposed Tariff Records are a change in rate, and therefore we clarify that DCRT's Tariff Records should be treated as changed rates.⁴⁵

The Commission stated it "does not rely on whether a public utility styles its proposed rate as an initial rate or as a change in rate" to make its determination on that issue.⁴⁶ The Commission also found "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."⁴⁷

The Commission found that "under the circumstances presented here, there is not a new service and there are not new customers" based on application of its longstanding two-part *SWEPCO* test quoted above.⁴⁸

Specifically:

⁴⁵ June 2025 Order at P 28 (citing 16 U.S.C. § 825I and *Old Dominion Elec. Coop. v. Pub. Serv. Elec. & Gas Co.*, 105 FERC ¶ 61,094, at P 17 (2003)). See also June 2025 Order at P 3 (describing rulings made in September 2023 Hearing Order and stating that no party sought rehearing or clarification of that order).

⁴⁶ June 2025 Order at P 29 (citing *FP&L*, 617 F.2d at 815).

⁴⁷ June 2025 Order at P 29.

⁴⁸ *Id.*

Upon 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 TAC. We agree with Trial Staff and Intervenors that it is appropriate for the Commission to look at the CAISO TAC rather than a PTO's [Participating Transmission Owner's or Participating TO's] individual rate to determine whether a new service is being provided to new customers. Because customers will neither pay a new rate nor receive a new service as a result of DCRT's Tariff Records becoming effective, and rather will continue to receive the same transmission service from CAISO, we find DCRT's Tariff Records to be a change in rate, consistent with the Commission's longstanding precedent.⁴⁹

The Commission "further f[ou]nd that the circumstances here differ from a scenario where a previously non-jurisdictional entity becomes subject to the Commission's jurisdiction for the first time."⁵⁰ The Commission contrasted that scenario with DCRT's situation, in which "transmission customers in CAISO will continue to receive the same Commission-jurisdictional transmission service with costs recovered through the CAISO TAC."⁵¹

The Commission was unpersuaded by the arguments in the DCRT Brief, including the contentions that "the Commission instituted an FPA section 206 proceeding in *Trans Bay Cable*, which involved substantially similar procedural facts to those presented here, and therefore the Commission should also

⁴⁹ *Id.* at P 30 (internal citation omitted). As support for the last sentence quoted above, the Commission used a "See, e.g." citation to an illustrative list of nine Commission orders. See *id.* at P 30 n.80.

⁵⁰ *Id.* at P 31.

⁵¹ *Id.*

establish a section 206 proceeding and proceed pursuant to section 206 in the instant case.”⁵²

DCRT alone filed a request for rehearing of the June 2025 Order,⁵³ and the Commission issued an order providing for further consideration on rehearing.⁵⁴ DCRT later filed a petition for review of the June 2025 Order and the order providing for further consideration in the D.C. Circuit,⁵⁵ which is currently holding the case before it in abeyance.⁵⁶

D. The January 2026 Order

In the January 2026 Order issued on January 30, 2026, a little over seven months after the June 2025 Order and three weeks into the hearing in these proceedings, the Commission reversed course: “Upon further consideration, we set aside the Interlocutory Appeal Order and the Commission’s determination that DCRT’s Tariff Records constitute a change in rate. As explained below and after reexamination of the record, we find that DCRT’s Tariff Records constitute an initial rate.”⁵⁷ As a result of those findings, the CAISO and other participants

⁵² See *id.* at P 14 (summarizing arguments contained in DCRT Brief at 9-12, which itself cited *Trans Bay*) (internal citation omitted).

⁵³ Request for Rehearing of DCR Transmission, L.L.C., Docket Nos. ER23-2309-002 and ER24-1394-002 (July 21, 2025) (DCRT Rehearing Request).

⁵⁴ *DCR Transmission, L.L.C.*, Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, 192 FERC ¶ 62,102 (2025).

⁵⁵ See Filing of Copy of *DCR Transmission, L.L.C. v. FERC*, Petition for Review Filed with the U.S. Court of Appeals for the D.C. Circuit, Docket Nos. ER23-2309-001 and ER24-1394-001 (Oct. 10, 2025).

⁵⁶ The D.C. Circuit is holding the case (No. 25-1199) in abeyance pending issuance of a further order on rehearing in the underlying Commission proceeding (*i.e.*, the now-issued order discussed in the next section of this Request for Rehearing). On November 19, 2025, the D.C. Circuit directed the Commission to file status reports at 60-day intervals. The Commission filed its most recent status report with the D.C. Circuit on January 21, 2026 (*i.e.*, prior to the issuance of the January 2026 Order); the next 60-day status report is due March 23, 2026.

⁵⁷ January 2026 Order at P 14.

challenging the Tariff Records in these consolidated proceedings carry the burden of proof under FPA section 206 to show the Tariff Records are unjust and unreasonable.⁵⁸ The Commission also instituted a proceeding pursuant to FPA section 206 (Docket No. EL26-34), established a refund effective date of June 12, 2024, and consolidated Docket Nos. ER23-2309, ER24-1394, and EL26-34 for purposes of hearing.⁵⁹

The Commission again described the longstanding two-part *SWEPCO* test discussed in the June 2025 Order (and quoted in the section of this Request for Rehearing immediately above) for determining whether a filing contains an initial rate or a change in rate.⁶⁰ DCRT had argued in its Rehearing Request that the June 2025 Order “erred in determining that DCRT’s Tariff Records should be treated as a change in rate” and “did not attempt to distinguish this case from *Trans Bay Cable, LLC*, which DCRT contends addressed facts nearly identical to those presented here.”⁶¹ In stark contrast to the Commission’s earlier total lack of receptivity to the contentions in the DCRT Brief,⁶² the Commission now stated

[c]onsistent with *Trans Bay*, we find that DCRT’s Tariff Records are an initial rate. While we acknowledge the Commission has not been consistent on whether it has proceeded under section 205 or section 206 in addressing proposed TRRs for transmission projects

⁵⁸ FPA section 206(b) states in relevant part 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 complainant.” 16 U.S.C. § 824e(b). For purposes of this DCRT proceeding, the CAISO and other parties challenging the Tariff Records are now complainants under FPA section 206(b) due to the findings in the January 2026 Order.

⁵⁹ January 2026 Order at PP 2, 14.

⁶⁰ *Id.* at P 15.

⁶¹ See *id.* at P 9 (citing DCRT Rehearing Request at 8-20) (internal citation to *Trans Bay* omitted).

⁶² Cf. June 2025 Order at PP 14, 26-31.

that were not yet operational, except for in *Trans Bay*, the Commission has not addressed whether the TRR filing was an initial or changed rate. Here, 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. Consequently, DCRT could not, as a practical matter, have been offering an existing service, nor could it have served existing customers. As DCRT's Tariff Records are for providing a new service to new customers, they constitute an initial rate.⁶³

The Commission stated that “[i]n light of our determination here and the Commission’s findings in the Hearing Order, we are instituting a proceeding under section 206 of the FPA in Docket No. EL26-34-000 to investigate whether DCRT’s Tariff Records are just and reasonable and not unduly discriminatory or preferential.”⁶⁴ The Commission also found that “consolidating the proceedings will promote administrative efficiency.”⁶⁵

The Commission stated that “in order to give maximum protection to customers, and consistent with our precedent, we have historically tended to establish the section 206 refund effective date at the earliest date allowed by [FPA] section 206.”⁶⁶ The Commission also stated that “Section 309 of the FPA ‘affords the Commission broad authority to remedy its errors and correct unjust situations.’”⁶⁷ The Commission explained that in its *Chehalis* case, “the Commission determined that after having erroneously accepted and suspended a rate filing, subject to refund, despite having no legal authority to do so, the

⁶³ January 2026 Order at P 17 (internal citations omitted).

⁶⁴ *Id.* at P 18.

⁶⁵ *Id.* at P 19.

⁶⁶ *Id.* at P 20 (citing Commission precedent).

⁶⁷ January 2026 Order at P 20 (quoting *TNA Merch. Projects, Inc. v. FERC*, 857 F.3d 354, 359 (D.C. Cir. 2017)). FPA Section 309 is contained in 16 U.S.C. Section 825h.

appropriate remedy under section 309 was “to treat [the] filing as an initial rate that would have been accepted for filing but also set for hearing under section 206.”⁶⁸ The Commission found that in this DCRT proceeding, as in the *Chehalis* case, “the Commission erroneously accepted and suspended DCRT’s Tariff Records, and we will use our section 309 authority to remedy this error.”⁶⁹ The Commission set the refund effective date in the DCRT proceeding for June 12, 2024—the effective date of the Tariff Records—finding “this date provides the maximum protection to consumers.”⁷⁰

III. Statement of Issues and Specifications of Error

The CAISO specifies the following issues and errors in accordance with Rules 713(c)(1) and -(2) of the Commission’s Rules of Practice and Procedure:⁷¹

1. Whether the January 2026 Order erred by arbitrarily and capriciously disregarding findings in the September 2023 Hearing Order that DCRT proposes a change in rate and that DCRT has the burden of demonstrating that its proposed transmission revenue requirement is just and reasonable under section 205 of the Federal Power Act. The January 2026 Order did thereby err.⁷²
2. Whether the January 2026 Order erred by effectively modifying and setting aside the findings in the final and non-appealable September 2023 Hearing Order in violation of section 313(a) of the

⁶⁸ January 2026 Order at P 20 (quoting *Chehalis Power Generating, L.P.*, 171 FERC ¶ 61,188, at P 44, *order on reh’g*, 172 FERC ¶ 61,232 (2020)) (together, *Chehalis*) (brackets in original).

⁶⁹ January 2026 Order at P 20.

⁷⁰ *Id.*

⁷¹ 18 C.F.R. § 385.713(c)(1) -(2).

⁷² See 16 U.S.C. § 824d; 16 U.S.C. § 824e; *Middle S. Energy, Inc. v. FERC*, 747 F.2d 763 (D.C. Cir. 1984); *DCR Transmission, L.L.C.*, 191 FERC ¶ 61,212 (2025); *Willowbrook Solar I, LLC*, 188 FERC ¶ 61,201 (2024); *Pac. Gas & Elec. Co.*, 185 FERC ¶ 61,243 (2024); *DCR Transmission, L.L.C.*, 184 FERC ¶ 61,199 (2023); *Citizens S-Line Transmission LLC*, 178 FERC ¶ 61,067 (2022); *Tri-State Generation & Transmission Ass’n, Inc.*, 174 FERC ¶ 61,009 (2021); *Energy Servs., Inc.*, 140 FERC ¶ 61,042 (2012).

Federal Power Act contrary to federal court and Commission precedent. The January 2026 Order did thereby err.⁷³

3. Whether the January 2026 Order erred by allowing the Presiding Judge to reopen findings in the final and non-appealable September 2023 Hearing Order that were not set for hearing. The January 2026 Order did thereby err.⁷⁴
4. Whether the January 2026 Order erred in disregarding federal court precedent establishing that the transmission revenue requirement of a participating transmission owner like DCRT is not a rate. The January 2026 Order did thereby err.⁷⁵
5. Whether the January 2026 Order erred in arbitrarily and capriciously ignoring record evidence establishing that the applicable rate in these proceedings is the CAISO's Transmission Access Charge. The January 2026 Order did thereby err.⁷⁶
6. Whether the January 2026 Order erred by ignoring ample precedent where the Commission treated the initial transmission revenue requirement filing of a new participating transmission owner in the CAISO as a change in rate. The January 2026 Order did thereby err.⁷⁷
7. Whether the January 2026 Order erred by ignoring congressional intent to protect consumers from excessive or exploitative rates, consistent with precedent establishing the Federal Power Act is

⁷³ See 16 U.S.C. § 825f; *TNA Merch. Projects, Inc. v. FERC*, 857 F.3d 354 (D.C. Cir. 2017); *Menominee Indian Tribe of Wis. v. United States*, 614 F.3d 519, (D.C. Cir. 2010); *Valero Interstate Transmission Co. v. FERC*, 903 F.2d 364 (5th Cir. 1990); *Hirschey v. FERC*, 701 F.2d 215 (D.C. Cir. 1983); *DCR Transmission, L.L.C.*, 191 FERC ¶ 61,212 (2025); *Pac. Gas & Elec. Co.*, 187 FERC ¶ 61,167 (2024); *Old Dominion Elec. Coop. v. Pub. Serv. Elec. & Gas Co.*, 105 FERC ¶ 61,094 (2003); *Ala.-Tenn. Nat. Gas Co.*, Opinion No. 196-A, 27 FERC ¶ 61,006 (1984).

⁷⁴ See *DCR Transmission, L.L.C.*, 191 FERC ¶ 61,212 (2025); *Epsilon Trading, LLC v. Colonial Pipeline Co.*, 185 FERC ¶ 61,126 (2023); *DCR Transmission, L.L.C.*, 184 FERC ¶ 61,199 (2023); *Blumenthal v. ISO New Eng. Inc.*, 128 FERC ¶ 63,017 (2009).

⁷⁵ See *Pac. Gas & Elec. Co. v. FERC*, 306 F.3d 1112 (D.C. Cir. 2002); *Middle S. Energy, Inc. v. FERC*, 747 F.2d 763 (D.C. Cir. 1984).

⁷⁶ See *DCR Transmission, L.L.C.*, 191 FERC ¶ 61,212 (2025); *DCR Transmission, L.L.C.*, 184 FERC ¶ 61,199 (2023).

⁷⁷ See *DCR Transmission, L.L.C.*, 191 FERC ¶ 61,212 (2025); *DCR Transmission, L.L.C.*, 184 FERC ¶ 61,199 (2023); *Morongo Transmission LLC*, 174 FERC ¶ 61,171 (2021); *GridLiance W. Transco LLC*, 160 FERC ¶ 61,003 (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); *Trans-Elect NTD Path 15, LLC*, 119 FERC ¶ 61,093 (2007); *Trans-Elect NTD Path 15, LLC*, 117 FERC ¶ 61,214 (2006).

primarily a consumer protection statute. The January 2026 Order did thereby err.⁷⁸

8. Whether the January 2026 Order erred by violating the requirements of the Administrative Procedure Act that prohibit an agency action that is (i) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, (ii) without observance of procedure required by law, and/or (iii) unsupported by substantial evidence. The January 2026 Order did thereby err.⁷⁹
9. Whether the January 2026 Order erred by overturning findings in the September 2023 Hearing Order and the June 2025 Order upon which the CAISO and other participants in these proceedings reasonably and detrimentally relied. The January 2026 Order did thereby err.⁸⁰

IV. Request for Rehearing

A. The January 2026 Order Improperly sets Aside Findings in the September 2023 Hearing Order that DCRT Proposes a Change to an Existing Rate and Thus the Burden of Proof Is on DCRT Under FPA section 205

The January 2026 Order improperly seeks to set aside foundational findings in the September 2023 Hearing Order, a final and non-appealable order as to those findings, that was not the subject of a rehearing request. As explained below,⁸¹ the January 2026 Order therefore violates section 313(a) of the FPA and is contrary to well-established precedent.

⁷⁸ See *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260 (2016); *Pa. Water & Power Co.*, 343 U.S. 414 (1952); *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944); *Xcel Energy Servs. v. FERC*, 815 F.3d 947 (2016); *DCR Transmission, L.L.C.*, 191 FERC ¶ 61,212 (2025); *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 190 FERC ¶ 61,184 (2025); *Sw. Elec. Power Co.*, 39 FERC ¶ 61,099 (1987).

⁷⁹ See 5 U.S.C. § 706; *Motor Vehicle Mfrs. Ass'n, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); *Hatch v. FERC*, 654 F.2d 825 (D.C. Cir. 1981).

⁸⁰ See *Clark-Cowlitz Joint Operating Agency v. FERC*, 826 F.2d 1074 (D.C. Cir. 1987); *Branch St. Solar Partners, LLC*, 194 FERC ¶ 61,124 (2026).

⁸¹ See *infra* Section IV.B of this Request for Rehearing.

As the June 2025 Order correctly observed, the Commission determined in the September 2023 Hearing Order “to suspend the proposed Tariff Records pursuant to FPA section 205” and the June 2025 Order was merely making “explicit” and thereby “clarify[ing]”⁸² the findings the Commission already had made as to the Tariff Records in the September 2023 Hearing Order. The January 2026 Order did not reverse this accurate finding as to what the Commission actually did in the September 2023 Hearing Order.

All evidence on the face of the September 2023 Hearing Order supports the conclusion the Commission reached therein that DCRT’s Tariff Records in these proceedings are a change in rate. The only matters the September 2023 Hearing Order set for hearing and settlement judge procedures were “DCRT’s proposed TO Tariff and Base TRR.”⁸³ The September 2023 Hearing Order accepted DCRT’s proposed TO Tariff and Base TRR and suspended them for a nominal period subject to refund and to the outcome of hearing and settlement judge procedures, consistent with FPA section 205.⁸⁴

If the Commission intended to find in the September 2023 Hearing Order that those Tariff Records constitute an initial rate, the Commission legally could not have suspended them or set them for refund without initiating an FPA section

⁸² June 2025 Order at P 28.

⁸³ September 2023 Hearing Order at Ordering Paragraph (B).

⁸⁴ *Id.* at P 1 and Ordering Paragraph (A). FPA section 205(e) states in relevant part that, “[w]henever [a] new schedule is filed the Commission shall have authority, . . . upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect.” 16 U.S.C. § 824d(e).

206 proceeding. The courts have held that the Commission “lacks the authority to suspend initial rate filings.”⁸⁵ And yet the Commission explicitly stated three times in the September 2023 Hearing Order that it was accepting and suspending the TO Tariff and Base TRR and making them subject to refund.⁸⁶ If the Commission believed when it issued the September 2023 Hearing Order that the Tariff Records were an initial rate, its exercise of its suspension and refund authority as to the Tariff Records would have exceeded its legal authority. Because the Commission cannot exceed its legal authority, the only reasonable reading of the September 2023 Hearing Order is that the Commission concluded the DCRT Tariff Records were a change in rate.

In initial rate filing proceedings, the Commission must open FPA section 206 proceedings to provide refund protection to customers against excessive or exploitative rates. However, in the September 2023 Hearing Order, the Commission did not take any of the steps required to initiate a section 206 proceeding. As the Commission has acknowledged:

In cases where . . . the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than the date of publication by the Commission of notice of its intention to initiate such proceeding nor later than five months after the publication date.⁸⁷

⁸⁵ See *Middle S. Energy, Inc. v. FERC*, 747 F.2d 763, 765 (D.C. Cir. 1984) (*Middle South Energy*).

⁸⁶ September 2023 Hearing Order at P 1 and Ordering Paragraph (A). In addition, the September 2023 Hearing Order is captioned “Order Accepting and Suspending Proposed Transmission Owner Tariff and Transmission Revenue Requirement, Subject to Refund, and Establishing Hearing and Settlement Judge Procedures.”

⁸⁷ *Basin Elec. Power Coop.*, 189 FERC ¶ 61,162, at P 40 (2024).

The September 2023 Hearing Order satisfied none of these FPA section 206 requirements. The September 2023 Hearing Order did not establish a section 206 refund effective date, nor did the Commission publish notice of its intention to initiate such a section 206 proceeding in the Federal Register or otherwise in conjunction with issuance of the September 2023 Hearing Order.⁸⁸

The only reference to FPA section 206 in the September 2023 Hearing Order was the Commission's directive, in Ordering Paragraph (B), that it was instituting hearing and settlement judge procedures pursuant to its authority conferred "by section 402(a) of the Department of Energy Organization Act and the FPA, particularly *sections 205 and 206* thereof" (emphasis added). This language is boilerplate the Commission frequently includes in orders where section 205 filings are set for hearing. For example, this language has been included in orders setting for hearing subject to suspension and refund proposed changes to Transmission Revenue Requirements by long-time CAISO Participating Transmission Owners such as Pacific Gas and Electric Company.⁸⁹ There can be no argument that such a filing is an initial rate filing.

⁸⁸ FPA section 206(b) states in relevant part that "[w]henver the Commission institutes a proceeding under this section, the Commission shall establish a refund effective date. . . . In the case of a proceeding instituted by the Commission on its own motion, the refund effective date shall not be earlier than the date of the publication by the Commission of notice of its intention to initiate such proceeding nor later than 5 months after the publication date." 16 U.S.C. § 824e(b). The section also states that, "[a]t the conclusion of any proceeding under this section, the Commission may 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, in excess of those which would have been paid under the just and reasonable rate, charge, classification, rule, regulation, practice, or contract which the Commission orders to be thereafter observed and in force." *Id.*

⁸⁹ See, e.g., *Pac. Gas & Elec. Co.*, 185 FERC ¶ 61,243, at P 45 and Ordering Paragraph (C) (2024).

Commission orders issued in other cases on rate filings submitted by utilities show the Commission is explicit about making findings that the submittals at issue are initial rate filings (*i.e.*, a filing that proposes a rate for a new service to a new customer).⁹⁰ Those same orders also expressly instituted FPA section 206 proceedings and mostly established associated EL dockets to consider the justness and reasonableness of the proposed initial rates.⁹¹ Each of these orders established refund effective dates for the applicable section 206 proceeding.⁹² An ordering paragraph in each of the orders specified the Commission was instituting hearing and settlement judge procedures pursuant to its authority conferred “by section 402(a) of the Department of Energy Organization Act and the FPA, particularly section 206 thereof”—omitting reference to the Commission’s additional authority to institute hearing and settlement judge procedures pursuant to FPA section 205.⁹³

By contrast, the Commission undertook none of these actions in this consolidated DCRT proceeding. Neither the September 2023 Hearing Order nor

⁹⁰ See, e.g., *Willowbrook Solar I, LLC*, 188 FERC ¶ 61,201, at P 1 n.4 (2024) (*Willowbrook*); *Mammoth N. LLC*, 187 FERC ¶ 61,220, at P 1 n.5 (2024) (*Mammoth*); *Citizens S-Line Transmission LLC*, 178 FERC ¶ 61,067, at P 28 (2022) (*Citizens S-Line*); *Fern Solar LLC*, 172 FERC ¶ 61,160, at P 1 n.4 (2020) (*Fern Solar*); *Tri-State Generation & Transmission Ass’n, Inc.*, 170 FERC ¶ 61,222, at P 85 (2020) (*Tri-State*).

⁹¹ See *Willowbrook*, 188 FERC ¶ 61,201, at PP 1, 13, 15; *Mammoth* 187 FERC ¶ 61,220, at PP 1, 20; *Citizens S-Line*, 178 FERC ¶ 61,067, at PP 3, 28-29; *Fern Solar* 172 FERC ¶ 61,160, at PP 1, 13; *Tri-State*, 170 FERC ¶ 61,222, at PP 2, 30.

⁹² See *Willowbrook*, 188 FERC ¶ 61,201, at P 17; *Mammoth*, 187 FERC ¶ 61,220, at P 26; *Citizens S-Line*, 178 FERC ¶ 61,067, at P 29; *Fern Solar* 172 FERC ¶ 61,160, at P 15; *Tri-State*, 170 FERC ¶ 61,222, at P 86.

⁹³ See *Willowbrook*, 188 FERC ¶ 61,201, at Ordering Paragraph (B); *Mammoth*, 187 FERC ¶ 61,220, at Ordering Paragraph (B); *Citizens S-Line*, 178 FERC ¶ 61,067, at Ordering Paragraph (C); *Fern Solar*, 172 FERC ¶ 61,160, at Ordering Paragraph (B); *Tri-State*, 170 FERC ¶ 61,222, at Ordering Paragraph (D).

the May 2024 Consolidation Order instituted an FPA section 206 proceeding or established a refund effective date for a section 206 proceeding.

The Commission's intentionality as to which section(s) of the FPA to cite in its ordering paragraphs on rate filings is vividly illustrated by the action it took in a proceeding solely under FPA section 205 (Docket ER12-1428) regarding revisions that Entergy Services, Inc. submitted to its Open Access Transmission Tariff (OATT)—*i.e.*, a filing to change an existing rate. The Commission issued an order accepting and suspending the OATT revisions that also stated it was instituting hearing and settlement judge procedures pursuant to its authority conferred “by section 402(a) of the Department of Energy Organization Act and the FPA, particularly section 206 thereof,” without mentioning FPA section 205.⁹⁴ In response, some parties to the proceeding filed a motion for clarification or, in the alternative, request for rehearing of the Commission's order in which they

request[ed] clarification that (1) implementation of the tariff changes that are the subject of this proceeding will be subject to refund pursuant to Federal Power Act (“FPA”) § 205, 18 CFR § 824d (2011), and, (2) consistent with proceedings arising under § 205, Entergy Services, Inc. (“Entergy”) bears the burden to justify the tariff changes it proposes in this proceeding.⁹⁵

In response, the Commission issued an *errata* notice solely to correct the ordering paragraph in relevant part to read “particularly *sections 205 and 206* thereof.”⁹⁶ The case later concluded with Entergy bearing the burden under FPA

⁹⁴ See *Entergy Servs., Inc.*, 139 FERC ¶ 61,173, at Ordering Paragraph (B) (2012).

⁹⁵ Motion for Clarification or, in the Alternative, Request for Rehearing on Behalf of Mississippi Delta Energy Agency, *et al.*, Docket No. ER12-1428-000, at 2 (June 15, 2012).

⁹⁶ *Entergy Servs., Inc.*, Errata Notice, 140 FERC ¶ 61,042 (2012) (emphasis added). Soon after the issuance of the errata notice, the parties withdrew their motion for clarification and alternative request for rehearing.

section 205 to justify its proposed OATT revisions and the Commission declining to order refunds.⁹⁷ In light of this intentionality, there is no basis to conclude the reference to section 205 in Ordering Paragraph (B) of the September 2023 Hearing Order was an error.

Moreover, the Commission was well aware the burden of proof was an issue in these proceedings when it issued the September 2023 Hearing Order. In that order, the Commission explained that “NCPA, DWR, and Six Cities argue that DCRT has not met its burden to demonstrate that the proposed rate is just and reasonable.”⁹⁸ The Commission clearly understood these intervenors meant DCRT bore the burden of proof under FPA section 205 as to the Tariff Records Filing.⁹⁹ If the intervenors were incorrect as to the applicable burden of proof (*i.e.*, if the burden were actually under FPA section 206 rather than section 205 as the intervenors asserted), the Commission certainly would have corrected their misstatement on that important legal issue.

In the September 2023 Hearing Order, the Commission did reference DCRT’s statement that it submitted its Tariff Records Filing pursuant to Section

⁹⁷ See *Entergy Servs., Inc.*, 142 FERC ¶ 63,017, at PP 28-36 (2013), *aff’d*, Opinion No. 532, 148 FERC ¶ 61,059, at PP 32-35, 132-33 (2014).

⁹⁸ September 2023 Hearing Order at P 20.

⁹⁹ Following the sentence quoted above, the Commission cited the protest of the Northern California Power Agency (NCPA) at page 2 and the protest of the California Department of Water Resources State Water Project (DWR) at pages 4-5. September 2023 Hearing Order at P 20 n.18. NCPA’s protest states in relevant part that “NCPA protests DCRT’s Stated Rate Filing because DCRT has not met its section 205 burden and demonstrated that the rate it is requesting is just and reasonable.” Protest of the Northern California Power Agency, Docket No. ER23-2309-000, at 2 (July 21, 2023). DWR’s protest states in relevant part that “[t]he Commission should not accept DCRT’s Base TRR and total Project cost because DCRT has not demonstrated that . . . the categories and amounts of the costs requested are just and reasonable.” Protest of the California Department of Water Resources State Water Project, Docket No. ER23-2309-000, at 4-5 (July 21, 2023). See *also id.* at 2 (“DCRT does not demonstrate that the filing is just and reasonable and so DCRT has not met its section 205 burden.”).

35.12 of the Commission’s regulations,¹⁰⁰ but nowhere in that order did the Commission make a finding as to whether DCRT’s statement was accurate—*i.e.*, determining whether it is Section 35.12 (regulations on initial rate filings) or Section 35.13 (regulations on filings to change existing rates) that applies to the DCRT Tariff Records Filing. Similarly, the May 2024 Consolidation Order contained no findings that the proceedings concern an initial rate filing. The Commission can treat a filing as a changed rate filing even if the public utility initially submits the filing under Section 35.12, and the Commission has done exactly that in numerous cases.¹⁰¹ Indeed, the Commission explained in the June 2025 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.”¹⁰²

DCRT itself was unclear in the transmittal letter for its Tariff Records Filing as to whether Section 35.12 or 35.13 applied to that filing. DCRT refers to Section 35.13, a regulation applicable to a change in rate, a number of times in its transmittal letter.¹⁰³ Notably, DCRT sought waiver of certain requirements of Section 35.13 but did not seek waiver of any requirements of Section 35.12.¹⁰⁴

¹⁰⁰ September 2023 Hearing Order at P 1.

¹⁰¹ See, e.g., *Tri-State Generation & Transmission Ass’n, Inc.*, 174 FERC ¶ 61,009, at PP 20-21, 31 (2021) (“We agree with United Power that Tri-State’s filing represents changed rates that fall within the Commission’s filing requirements under 18 C.F.R. § 35.13 (2020).”); *Pub. Serv. Co. of Ind., Inc.*, 51 FERC ¶ 61,367, at 62,228 (1990) (“We disagree with PSI’s assertion that its FS-1 rate is an initial rate filing. This is clearly a change in rate because PSI may enter into FS-1 sales with some of its current customers, if they are otherwise eligible utilities.”); *Ne. Utils. Serv. Co. (re Pub. Serv. Co. of N.H.)*, 50 FERC ¶ 61,266, at 61,836 (1990) (“NUSCO contends that the Seabrook Power Contract and the Sharing Agreement are initial rate schedules pursuant to section 35.12 of our regulations, 18 C.F.R. § 35.12 (1989). We disagree. . . . NUSCO’s submissions demonstrate that PSNH is not a new customer of the Northeast system.”).

¹⁰² June 2025 Order at P 29 (citing *FP&L*, 617 F.2d at 815).

¹⁰³ Transmittal letter for Tariff Records Filing at 3 n.8, 12, 49, 50.

¹⁰⁴ *Id.* at 49-50.

As such, the transmittal letter is not significant evidence DCRT intended the Tariff Records to be an initial rate filing.

In short, all the objective evidence in the text of the September 2023 Hearing Order confirms that, in that order, the Commission treated the DCRT Tariff Records as a change in rate and properly suspended them subject to refund and subject to hearing procedures. The January 2026 Order errs in ignoring the plain text of the September 2023 Hearing Order.

B. The Commission Lacks the Authority to Set Aside or Modify the September 2023 Hearing Order, a Final and Non-Appealable Order Which Was Not the Subject of Any Rehearing Request

The January 2026 Order did not just “modify[] the discussion in the Interlocutory Appeal Order and set[] aside [that] order.”¹⁰⁵ The January 2026 Order also effectively modified and set aside the September 2023 Hearing Order as to its findings that the Tariff Records are a change of rate and the consequence that DCRT bears the burden of proof under FPA section 205. FPA section 313(a) and the related court precedent discussed below prohibit that action in the January 2026 Order, because no party filed a request for rehearing of the September 2023 Hearing Order.

Importantly, the January 2026 Order did not overturn the finding in the June 2025 Order that the September 2023 Hearing Order “accept[ed] and suspend[ed] the proposed Tariff Records pursuant to FPA section 205,” for which the time for seeking rehearing had passed, thus making the September 2023

¹⁰⁵ January 2026 Order at P 2 & n.4.

Hearing Order final on that issue.¹⁰⁶ Instead, the January 2026 Order acknowledged that DCRT submitted its Tariff Records solely pursuant to FPA section 205 and that the September 2023 Hearing Order accepted and suspended them subject to refund.¹⁰⁷ Because the September 2023 Hearing Order is where the Commission first treated the DCRT filing as a change in rate filing, and no party sought rehearing of that decision, the Commission has no legal authority to overturn that treatment more than two years later.

FPA section 313(a) requires all requests for rehearing of any Commission order under the FPA to be filed within 30 days of the issuance of the order.¹⁰⁸ If no party requests rehearing within 30 days of the issuance of a Commission order under the FPA, that order becomes final and non-appealable.¹⁰⁹ These requirements apply even to orders where the Commission has suspended a filing and set some issues for hearing. Neither DCRT nor any other party requested rehearing of the September 2023 Hearing Order or the May 2024 Consolidation

¹⁰⁶ June 2025 Order at P 28.

¹⁰⁷ January 2026 Order at PP 3-4.

¹⁰⁸ 16 U.S.C. § 825/(a). (“Any person, electric utility, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, electric utility, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. “). Similarly, Rule 713(b) of the Commission’s Rules of Practice and Procedure (18 C.F.R. § 385.713(b)) states “[a] request for rehearing by a party must be filed not later than 30 days after issuance of any final decision or other final order in a proceeding.”

¹⁰⁹ See, e.g., *La. Pub. Serv. Comm’n v. Entergy Corp.*, 162 FERC ¶ 61,234, at P 149 (2018) (“Accordingly, we find that the Presiding Judge correctly found that the Louisiana Commission failed to take the critical step of seeking rehearing of the 2012 Rehearing Order. The 2012 Rehearing Order is the final order in that docket and is no longer subject to judicial review.”); *Old Dominion Elec. Coop. v. Pub. Serv. Elec. & Gas Co.*, 105 FERC ¶ 61,094, at P 17 (2003) (finding that “[b]ecause ODEC did not seek rehearing of the Complaint Order, that order became final and non-appealable 30 days following its issuance”); *CNG Transmission Corp.*, 86 FERC ¶ 61,013, at 61,030 (1999) (“Since no parties have filed a request for rehearing of that order, it is final and non-appealable.”).

Order.¹¹⁰ Notwithstanding the fact that the Commission suspended DCRT's Tariff Records and set them for hearing in the September 2023 Hearing Order, the Commission expressly found that the September 2023 Hearing Order was "final" as to the issue of "whether DCRT's Tariff Records constitute an initial or changed rate":

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, and no party sought rehearing or clarification of the Commission's determination in the Hearing Order to accept and suspend the proposed Tariff Records pursuant to FPA section 205, or the Commission's authority to do so. Moreover, the time for rehearing of any argument that the Commission erred in the Hearing Order has passed. *Accordingly, the Hearing Order is final as to that issue.*¹¹¹

"A final order is one that imposes an obligation, denies a right, or fixes some legal relationship as a consummation of the administrative process."¹¹² As such, the September 2023 Hearing Order is final and non-appealable in finding DCRT's Tariff Records constitute a change in rate and thus DCRT carries the

¹¹⁰ The Commission acknowledges this in Paragraphs 4 and 5 of the January 2026 Order. Filing a request for rehearing of the September 2023 Hearing Order, the May 2024 Consolidation Order, or both would have been permissible under FPA section 313(a). *See, e.g., Pac. Gas & Elec. Co.*, 187 FERC ¶ 61,167 (2024) (order addressing arguments raised on rehearing of order setting matter for hearing and settlement judge procedures); *Sw. Power Pool, Inc.*, 164 FERC ¶ 61,120 (2018) (same); *City of Azusa, Cal., et al.*, 106 FERC ¶ 61,143 (2004) (order denying rehearing and establishing hearing procedures).

¹¹¹ June 2025 Order at P 28 (emphasis added). In contrast to DCRT's inaction in these proceedings, parties in other proceedings *have* filed requests for rehearing of final determinations made in hearing and suspension orders, which the Commission addressed in orders on rehearing. *See, e.g., Pac. Gas & Elec. Co.*, 187 FERC ¶ 61,167, at PP 57-58 (proceeding on utility's proposed revisions to its TO Tariff to revise its formula rate for costs related to its transmission facilities); *Morongo Transmission LLC*, 175 FERC ¶ 61,104, at PP 18-21 (2021) (proceeding on utility's proposed TO Tariff and TRR for new transmission project).

¹¹² *See, e.g., La. Pub. Serv. Comm'n v. Sys. Energy Recs., Inc.*, 182 FERC ¶ 61,080, at P 6 (2023) (citing *The Reliable Automatic Sprinkler Co. v. Consumer Prod. Safety Comm'n*, 324 F.3d 726, 731 (D.C. Cir. 2003)).

burden of proof under FPA section 205 to show the Tariff Records are just and reasonable.

FPA section 313(a) states in relevant part:

[u]ntil the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b) [of FPA Section 313], 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.

The federal courts have found that the quoted FPA provision means the Commission can *sua sponte* modify or set aside a previous Commission finding or order, in whole or in part, upon reasonable notice **only if** a party filed a request for rehearing of the finding or order.¹¹³ As a federal court has explained:

Obtaining judicial review of a FERC order has a jurisdictional prerequisite: applying for rehearing within 30 days after issuance of the order. A party aggrieved by a FERC order has 60 days after FERC issues an order upon an application for rehearing in which to file a petition for judicial review. *If no one files an application for rehearing within 30 days of the FERC order, the time for judicial review expires at the end of the 30-day period, the FERC order becomes final, and FERC can no longer modify the order.*¹¹⁴

Although *Valero* was a Natural Gas Act (NGA) case, its findings are equally applicable here because the provisions of FPA section 313(a) and NGA section

¹¹³ *Hirschey v. FERC*, 701 F.2d 215, 218 (D.C. Cir. 1983) (*Hirschey*) (“[T]his court made it clear that, under section 313(a), the Commission only has the ‘power to correct an order . . . until such time as the record on appeal has been filed with a court of appeals *or the time for filing a petition for judicial review has expired.*’ The time for judicial review in this case expired on July 7, the final date for filing a petition for rehearing. Thus, section 313(a) provides no authority for the FERC’s action in this case.”) (quoting *Pan Am. Petroleum Corp. v. FPC*, 322 F.2d 999, 1004 (D.C. Cir.), *cert. denied*, 375 U.S. 941 (1963)) (emphasis in original). See also *Tenn. Gas Pipeline Co. v. FERC*, 871 F.2d 1099, 1107-09 (D.C. Cir. 1989) (making substantially same findings as to Commission power under section 19 of the Natural Gas Act, 15 U.S.C. § 717r(a), which contains a provision paralleling the “modify or set aside” provision in FPA section 313(a) quoted above).

¹¹⁴ *Valero Interstate Transmission Co. v. FERC*, 903 F.2d 364, 368 (5th Cir. 1990) (internal citations omitted) (emphasis added) (*Valero*).

19(a) are “counterpart[s]” and “substantially identical,” and therefore “are to be interpreted consistently with each other.”¹¹⁵

A narrow exception to this statutory restriction preventing the Commission from modifying a final order that is not the subject of a rehearing request does not apply to the January 2026 Order. Absent the filing of a request for rehearing, the Commission can *sua sponte* correct a ministerial or clerical error or omission in a previous finding or order.¹¹⁶ For example, in one proceeding the Commission found “it is necessary to correct an inadvertent ministerial error in [Commission] Opinion No. 196” issued earlier in the same proceeding.¹¹⁷ Specifically, the Commission in that case clarified “the descriptive language in Opinion No. 196 was incorrect and should be corrected to make clear that the rates from April 3, 1983 to May 31, 1983, are still subject to refund and hearing in Docket No. RP83-65,” consistent with the April 3, 1983 effective date of the company’s new base tariff rate established by previous Commission orders.¹¹⁸

The Commission explained its authority to make this correction:

It is well established that agencies, like courts, have the power to correct ministerial errors. This authority is not dependent upon the characterization of the error as inadvertent or ministerial, but is rooted in the fundamental principle that justice demands that errors in execution of a lawful policy should not undermine that policy determination.¹¹⁹

¹¹⁵ *Graham ex rel. Mich. Dep’t of Nat. Res. v. FERC*, 180 F.3d 278, 280 n.2 (D.C. Cir. 1999).

¹¹⁶ *FP&L*, 617 F.2d at 817-18; see also *Int’l Paper Co. v. FERC*, 737 F.2d 1159, 1163-66 (D.C. Cir. 1984).

¹¹⁷ *Ala.-Tenn. Nat. Gas Co.*, Opinion No. 196-A, 27 FERC ¶ 61,006, at 61,007 (Opinion No. 196-A), *reh’g denied on other grounds*, Opinion No. 196-B, 27 FERC ¶ 61,452 (1984).

¹¹⁸ Opinion No. 196-A, 27 FERC at 61,008.

¹¹⁹ *Id.* The Commission went on to explain how its correction of the ministerial error was consistent with the *Hirschey* and *FP&L* cases cited above. *Id.* at 61,008-09.

The January 2026 Order modified the September 2023 Hearing Order in dramatic ways, finding the Tariff Records constitute an initial rate and upending the burden of proof so that the CAISO and other intervenors must now demonstrate that the DCRT Tariff Records are unjust and unreasonable, thus depriving consumers of the full refund protection of FPA section 206.¹²⁰ As such, the January 2026 Order cannot be viewed as merely correcting a ministerial or clerical error or omission in the September 2023 Hearing Order; it essentially reverses the order retroactively.

Nor can the Commission turn to section 309 of the FPA to circumvent the prohibition on modifying or setting aside the September 2023 Hearing Order retroactively after it became final and non-appealable. The Commission cannot use its FPA section 309 authority to get around the express and specific requirements of FPA section 313(a). As interpreted by the courts and by the Commission itself, “any actions that FERC takes under § 309 must ‘conform[] with the purposes and policies of Congress’ and cannot ‘contravene any terms of the Act.’ Thus, § 309 cannot be used to supersede specific statutory

¹²⁰ In contrast, the June 2025 Order stated “the [September 2023] Hearing Order was not explicit on whether DCRT’s proposed Tariff Records are a change in rate, and therefore we clarify that DCRT’s Tariff Records should be treated as changed rates.” June 2025 Order at P 28. See *also id.* at P 1 (“We grant the interlocutory appeal and clarify the issues in the proceeding, as discussed below.”). The clarification the June 2025 Order provided thus simply confirmed the only reasonable reading of the text of the September 2023 Hearing Order that the Commission was treating the DCRT Tariff Records as a change in rate and so DCRT bears the burden of proof to show they are just and reasonable pursuant to FPA section 205. See *supra* Section IV.A of this Request for Rehearing. As explained above, any contrary reading would assume the Commission exceeded its legal authority by suspending an initial rate solely under FPA section 205.

strictures.”¹²¹ The Commission itself has recognized that “FPA section 309 is not itself an independent grant of authority” and “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.”¹²²

Furthermore, the Commission should find that equitable principles underlying the doctrine of laches precludes DCRT from reaping the benefits of the January 2026 Order despite DCRT’s failure to file a request for rehearing of the September 2023 Hearing Order, which is now final and non-appealable as to the suspension of the Tariff Records under section 205. Laches is “an equitable defense that applies where there is (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense.”¹²³ Laches “is designed to promote diligence and prevent enforcement of stale claims by those who have slumber[ed] on their rights.”¹²⁴ DCRT slumbered on its rights from October 2023 until it filed its Brief on May 15, 2025 to claim, for the first time, that its Tariff Records Filing was in fact an initial rate filing and the Commission “should have set Docket Nos. ER23-2309-000, ER23-

¹²¹ *TNA Merch. Projects, Inc. v. FERC*, 857 F.3d at 359 (quoting *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 158 (D.C. Cir. 1967)) (internal citation omitted). For example, the D.C. Circuit has found statutory limitations such as the filed rate doctrine applicable to rates under FPA sections 205 and 206 “limits [FERC’s] remedial authority” to “craft a variety of remedies under Section 309 of the Federal Power Act.” *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 832 (D.C. Cir. 2021).

¹²² *Cal. ex rel. Brown v. Powerex Corp.*, 135 FERC ¶ 61,178, at P 76 (2011) (internal quotation marks omitted).

¹²³ *Manin v. NTSB*, 627 F.3d 1239, 1241 (D.C. Cir. 2011) (quoting *Pro Football, Inc. v. Harjo*, 565 F.3d 880, 882 (D.C. Cir. 2009)).

¹²⁴ *Menominee Indian Tribe of Wis. v. United States*, 614 F.3d 519, (D.C. Cir. 2010) (quoting *Gull Airborne Instruments, Inc. v. Weinberger*, 694 F.2d 838, 843 (D.C. Cir. 1982)) (internal quotation marks omitted).

2309-001, to proceed as a FPA section 206 proceeding.”¹²⁵ Ratepayers, the CAISO, and other intervenors opposing the Tariff Records are prejudiced by the findings in the January 2026 Order, which the Commission would never have had occasion to issue if DCRT had not filed its Rehearing Request of the June 2025 Order.¹²⁶ The Commission should reverse the January 2026 Order to prevent DCRT from inequitably benefitting from its stale claims.¹²⁷

C. The Presiding Judge Had No Authority to Reopen the Findings in the September 2023 Hearing Order that the Tariff Records Are a Change in Rate and Thus the Burden of Proof Is on DCRT Under FPA Section 205

Similarly, the Presiding Judge had and has no authority to modify or set aside the portions of the September 2023 Hearing Order treating the DCRT Tariff Records as a change in rate. The September 2023 Hearing Order did not leave it for the Presiding Judge to determine whether the Tariff Records constitute an initial or a changed rate. Nowhere in the September 2023 Hearing Order did the Commission state it was also setting for hearing and settlement judge procedures the issue of whether those Tariff Records constitute an initial rate or

¹²⁵ See DCRT Brief at 11.

¹²⁶ See *supra* Sections III.B-D of this Request for Rehearing.

¹²⁷ See, e.g., *Cont'l Res., Inc. v. N. Border Pipeline Co.*, 176 FERC ¶ 61,183, at P 24 (2021) (“We deny the Complaint. We are not persuaded by Continental's argument that the equities support its request for disgorgement. It is a fundamental principle of equity that ‘equity aids the vigilant’ and not ‘those who slumber on their rights.’”) (quoting *Harbor Cogeneration Co. v. S. Cal. Edison Co.*, 171 FERC ¶ 61,221, at P 30 (2021)); *City of Oakland, Cal. v. Pac. Gas & Elec. Co.*, 165 FERC ¶ 61,249, at P 34 (2018) (“Port had ample opportunity over roughly two decades to clarify the nature of the service it took from PG&E and failed to do so. We therefore do not think requiring refunds from PG&E would be appropriate.”); *Cal. Dep’t of Water Res.*, 120 FERC ¶ 61,057, at P 14 (2007) (“The Commission has previously explained that an entity cannot ‘sleep on its rights’ and then seek untimely intervention.”) (citing Commission precedent).

a changed rate.¹²⁸ Therefore, the January 2026 Order erred by allowing the Presiding Judge to reopen final and non-appealable findings in the September 2023 Hearing Order that were not set for hearing.

The June 2025 Order expressly 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.¹²⁹ In addition, the January 2026 Order implicitly confirmed that this was not an issue to be addressed by the Presiding Judge by making that determination itself instead of authorizing the Presiding Judge to make it.

Nonetheless, the Bench Rulings Order rested on the erroneous premise 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 Administrative Law Judge assigned to preside over the hearing has the authority to find the case involves an initial rate filing, thereby: (1) compelling the Commission “to publish a notice of its intention to initiate a 206 proceeding and to establish a refund effective date;”¹³⁰ and (2) shifting the burden of proof.¹³¹ As explained above, the Commission

¹²⁸ See September 2023 Hearing Order at P 40 (“Our preliminary analysis indicates that DCRT’s TO Tariff and Base TRR have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful. DCRT’s filing raises issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.”).

¹²⁹ June 2025 Order at P 28 (finding 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”).

¹³⁰ Bench Rulings Order at P 28.

¹³¹ See, e.g., *id.* at P 26 (“*Middle South [Energy]* and *SWEPCO* compel the Commission and me to proceed under FPA section 206 once we have determined that DCRT’s Tariff Records are an initial rate. I have now made that determination.”) (footnote omitted).

unquestionably intended to determine for itself in the September 2023 Hearing Order—for which no party sought rehearing—whether the Tariff Records are an initial rate or a change in rate, and did not delegate the making of that determination to the Presiding Judge.¹³²

Section 313(a) of the FPA does not provide an exception whereby Administrative Law Judges can open up a final and non-appealable order. Nor is the CAISO aware of any basis on which the Commission has delegated the authority to make such determinations to Administrative Law Judges. To the contrary, relevant precedent indicates the Commission prohibits Administrative Law Judges from exceeding the authority expressly delegated to them, including on issues addressed in an underlying order for which no party requested rehearing. For example, in an order on an initial decision issued by an Administrative Law Judge, the Commission stated “[t]he Initial Decision argues that the Commission’s Hearing Order erred by setting Colonial’s grandfathered rates for investigation.”¹³³ The Commission explained it “disagree[d] with the Initial Decision. As an initial matter, because no party sought rehearing of the Hearing Order, any argument challenging the Commission’s decision that the Complaints presented sufficient evidence to warrant a hearing has been waived.”¹³⁴ The Commission also cited the following precedent:

¹³² See *supra* Section IV.A of this Request for Rehearing.

¹³³ *Epsilon Trading, LLC v. Colonial Pipeline Co.*, 185 FERC ¶ 61,126, at P 370 (2023) (*Epsilon Trading*).

¹³⁴ *Id.* at P 374. The Commission went on to explain that “[n]onetheless, we continue to find that the Hearing Order [in the *Epsilon Trading* proceeding] properly determined that the Complaints satisfied the standard necessary to set the challenges to Colonial’s grandfathered rates for hearing.” See *id.* at PP 374-81.

- “[O]nce the agency has ruled on a given matter . . . it is not open to reargument by the administrative law judge.”¹³⁵
 - “[T]he Presiding Judge is not free to embark on matters that clearly usurp the Commission’s obligatory duty of making an initial determination as to whether a complainant has submitted the requisite filing under” Rule 206 of the Commission’s Rules of Practice and Procedure “and set forth sufficient cause for instituting an investigative hearing under” the FPA.¹³⁶
- Furthermore, “[i]t is axiomatic that the scope of any proceeding set for hearing before an Administrative Law Judge (ALJ) is established by the Hearing Order itself. Simply stated, the ALJ has the jurisdiction conferred by the Hearing Order and no more.”¹³⁷ The only matters the September 2023 Hearing Order set for hearing and settlement judge procedures were “DCRT’s proposed TO Tariff and Base TRR” under FPA section 205.¹³⁸ Nowhere in the September 2023 Hearing Order did the Commission state it was also setting for hearing and

¹³⁵ *Id.* at P 375 n.948 (quoting *Iran Air v. Kugelman*, 996 F.2d 1253, 1260, 302 U.S. App. D.C. 174 (D.C. Cir. 1993)).

¹³⁶ *Epsilon Trading* at P 375 n.948 (quoting *Cent. La. Elec. Co.*, 64 FERC ¶ 63,020, at 65,065 (1993)). The Commission also found that “[a]lthough orders establishing hearing procedures are typically not final orders because they will be succeeded by further Commission action,” in the case at hand the Commission’s determination that the complaints presented sufficient evidence to warrant a hearing “represented a final determination on this issue.” *Epsilon Trading* at P 375 n.948. Similarly, the Commission made a final determinations in the September 2023 Hearing Order in the instant proceeding that DCRT’s Tariff Records Filing was a revision to an existing rate under FPA section 205.

¹³⁷ *Blumenthal v. ISO New Eng. Inc.*, 128 FERC ¶ 63,017, at P 7 (2009). *See also Villages of Jackson Ctr. v. Dayton Power & Light Co.*, 91 FERC ¶ 61,127, at 61,484 (2000) (finding “the clear intent of the March 15 Order, as expressed by the plain language of the order, is that the only matter set for hearing is the matter specifically identified in the order”).

¹³⁸ September 2023 Hearing Order at Ordering Paragraph (B).

settlement judge procedures whether those Tariff Records constituted an initial rate subject to FPA section 206.

The Commission's attempt to set aside or modify the September 2023 Hearing Order in the January 2026 Order rests entirely on the interlocutory appeal of the Bench Rulings Order which the Presiding Judge had no authority to issue in the first place. The June 2025 Order properly ruled that the Presiding Judge erred in the Bench Rulings Order.¹³⁹ The January 2026 Order, however, effectively resuscitates the impermissible legal conclusion in the Bench Rulings Order. The Commission's reliance on the Bench Rulings Order is another legal error which demonstrates why the January 2026 Order must be reversed.

Indeed, the Bench Rulings Order highlights how the September 2023 Hearing Order already concluded that the DCRT Tariff Records are a change in rate. The purported finding in the Bench Rulings Order that DCRT's Tariff Records constitute an initial rate and that the Commission should have initiated (or implicitly did initiate) a proceeding under FPA section 206 in this case is by necessity a finding that the Commission made the following legal errors:

- The Commission erred in suspending and setting for refund an initial rate filing, as the Commission repeatedly stated it was doing in September 2023 Hearing Order;
- The Commission erred by failing to establish a refund effective date for the FPA section 206 proceeding; and
- The Commission erred by failing to publish notice of its intention to initiate such a section 206 proceeding.

¹³⁹ June 2025 Order at P 26.

The Presiding Judge acknowledged as much in the Bench Rulings Order when he held that the Commission “will have to take steps to establish formally a refund effective date and confirm the statutory basis of this hearing.”¹⁴⁰ Thus, the Bench Rulings Order further supports the conclusion the Commission found the DCRT Tariff Records to be a change in rate in the September 2023 Hearing Order.

D. The Evidence Confirms the DCRT Tariff Records are a Change in Rate Because the Rate at Issue in these Proceedings Is the Transmission Access Charge Collected by the CAISO under the CAISO Tariff

Even assuming, solely for the sake of argument, the Commission had the authority to modify its treatment of the DCRT Tariff Records as a change in rate, the Commission’s conclusions in the January 2026 Order are legally flawed for numerous other reasons.

First, the courts have held that a transmission revenue requirement of participating transmission owners like the DCRT Base TRR at issue in these consolidated proceedings is not itself a rate. Instead, such a Base TRR is an input into the CAISO’s Transmission Access Charge (TAC), the rate actually paid by customers taking service over the DCRT Project. The D.C. Circuit has addressed this question directly, holding: “The CAISO’s TAC methodology is a formula rate through which the TRR of each participating transmission owner is collected. . . . As such, the TRR of each participating transmission owner can be conceptualized not as its own rate but rather as a cost of the CAISO.”¹⁴¹

¹⁴⁰ Bench Rulings Order at P 30; *see also id.* at P 28.

¹⁴¹ *PG&E v. FERC*, 306 F.3d at 1116 (D.C. Cir. 2002) (citation omitted).

Consistent with the D.C. Circuit's holding, DCRT's Base TRR is not a rate paid by any customer; indeed, DCRT has no rate that is paid by any customer, nor does it have transmission service agreements with any customer. The Commission's finding in the January 2026 Order that the DCRT Tariff Records (*i.e.*, its Base TRR and TO Tariff) are an initial rate directly contradicts the holding of the D.C. Circuit that a TRR is not "its own rate."

Moreover, all the evidence in this case further confirms the applicable rate is the Transmission Access Charge under the CAISO Tariff and DCRT's Tariff Records are a change in rate, just as the Commission made "explicit" in the June 2025 Order to "clarify" those same findings in the September 2023 Hearing Order.¹⁴² Thus, the January 2026 Order erred in modifying and setting aside those earlier Commission findings.

Under the Commission-approved CAISO Tariff, all market participants withdrawing energy from the CAISO controlled grid are assessed Transmission Access Charges in accordance with Section 26.1 and Appendix F, Schedule 3 of the CAISO Tariff. The Transmission Access Charge or "TAC" is "designed to recover each Participating TO's or Approved Project Sponsor's Transmission Revenue Requirement."¹⁴³ DCRT is both a Participating Transmission Owner or "Participating TO" and an Approved Project Sponsor.

In its transmittal letter for the Tariff Records Filing, DCRT stated the Base TRR will be collected by the CAISO under a rate in the CAISO Tariff—the

¹⁴² See June 2025 Order at PP 28, 30.

¹⁴³ See Section 26.1 of the CAISO Tariff.

Transmission Access Charge: “Upon becoming a CAISO [Participating Transmission Owner], DCRT’s Base TRR will be collected by the CAISO pursuant to the Transmission Access Charge for Regional Transmission Facilities (‘TAC’).”¹⁴⁴ DCRT also stated “DCRT’s revenues will be derived from the CAISO TAC, which, in turn, is based on the combined Transmission Revenue Requirements of the various entities that have turned over functional control of their transmission assets to the CAISO.”¹⁴⁵ DCRT acknowledged Section 5.1 of its proposed TO Tariff “states that the applicable Access Charges are provided in the CAISO Tariff.”¹⁴⁶ DCRT again acknowledged the applicable rates are CAISO rates when it sought waiver of certain Commission requirements under Section 35.13 of the Commission’s regulations on the grounds that “rate design information is not applicable because DCRT’s revenue requirement is collected by the CAISO via the CAISO TAC.”¹⁴⁷ Thus, DCRT itself recognized the applicable rate is the CAISO Transmission Access Charge.

Consistent with the D.C. Circuit’s findings in *PG&E v. FERC*, the Base TRR is not a rate. No customer will pay DCRT the Base TRR. Instead, DCRT’s Base TRR is one input of many to Participating TO Transmission Revenue Requirements the CAISO uses to calculate the Regional Transmission Access Charge, a single grid-wide rate the CAISO charges to all market participants withdrawing energy from the CAISO controlled grid. DCRT acknowledged this in

¹⁴⁴ Transmittal letter for Tariff Records Filing at 2.

¹⁴⁵ *Id.* at 3 n.8.

¹⁴⁶ *Id.* at 46.

¹⁴⁷ *Id.* at 49. Section 35.13 of the regulations is contained in 18 C.F.R Section 35.13.

its Tariff Records Filing when it stated, “DCRT’s revenues will be derived from the CAISO TAC, which, in turn, is based on the combined Transmission Revenue Requirements of the various entities that have turned over functional control of their transmission assets to the CAISO.”¹⁴⁸ DCRT’s Base TRR is therefore properly seen as an input to an existing rate that will increase that rate, *i.e.*, increase the Transmission Access Charge.

DCRT’s Tariff Records also constitute a change in rate from the rate on file in the DCRT APSA for the reasons explained below. As the winner of a competitive solicitation under Section 24.5 of the CAISO Tariff, DCRT was required to execute an APSA with the CAISO. The CAISO and DCRT executed their APSA on December 1, 2015, and subsequently executed amendments to that DCRT APSA.

As noted above,¹⁴⁹ DCRT stated the proposed Base TRR is consistent with DCRT’s obligations under its APSA with the CAISO.¹⁵⁰ The APSA is an agreement accepted by the Commission under FPA section 205 which governs the TRR issues in this case. The APSA between DCRT (in its capacity as Approved Project Sponsor for the Project) and the CAISO follows the *pro forma* APSA accepted by the Commission as Appendix X to the CAISO Tariff.¹⁵¹ The

¹⁴⁸ Transmittal letter for Tariff Records Filing at 3 n.8.

¹⁴⁹ See *supra* Section II.A of this Request for Rehearing.

¹⁵⁰ Transmittal letter for Tariff Records Filing at 2.

¹⁵¹ See <https://www.caiso.com/documents/appendix-x-approved-project-sponsor-agreement-as-of-aug-3-2024.pdf>. The Commission accepted the *pro forma* APSA in *California Independent System Operator Corporation*, 149 FERC ¶ 61,107 (2014). The Commission also issued a letter order on February 12, 2015 that accepted revisions to the *pro forma* APSA submitted on compliance with that order.

DCRT APSA is a rate on file with the Commission as a service agreement (designated as CAISO Service Agreement No. 3496) under the CAISO Tariff via reporting through the Commission's Electric Quarterly Report (EQR) requirements.¹⁵² The CAISO filed the DCRT APSA via the EQR system years before DCRT submitted its Tariff Records Filing.

DCRT acknowledges numerous times in its Tariff Records Filing that an issue in this case is whether its Base TRR is consistent with the DCRT APSA.¹⁵³ Section 10.1 of the DCRT APSA provided as an exhibit to the Tariff Records Filing further confirms that the Base TRR of DCRT, in its capacity as an Approved Project Sponsor, is an Access Charge under the CAISO Tariff:

If FERC approves such Transmission Revenue Requirement, the CAISO shall incorporate the Transmission Revenue Requirement into the Regional Access Charge or Local Access Charge in accordance with the CAISO Tariff. The Approved Project Sponsor acknowledges and agrees with the cost estimates and the binding cost cap, or other binding cost containment measures, if applicable, set forth in Appendix E [to the DCRT APSA].¹⁵⁴

¹⁵² See, e.g., *Revised Pub. Util. Filing Requirements*, Order No. 2001, 99 FERC ¶ 61,107, at P 16 (2002) (“[P]ublic utilities that have standard forms of agreements in their transmission, cost-based power sales tariffs, or tariffs for other generally applicable services will no longer file conforming agreements with the Commission. The filing requirements of FPA section 205(c) will be satisfied by the standard forms of agreements and by the electronic filing of Electric Quarterly Reports.”); *Elec. Quarterly Reports*, 148 FERC ¶ 61,083, at P 6 (2014) (“The Commission established the EQR reporting requirements to help ensure the collection of information needed to perform its regulatory functions over transmission and sales of electric energy, while making data more useful to the public and allowing public utilities to better fulfill their responsibility under FPA section 205(c) to have rates on file in a convenient form and place.”) (internal citation omitted); *Midcontinent Indep. Sys. Operator, Inc.*, 182 FERC ¶ 61,175, at P 3 n.8 (2023) (“MISO explains that the Agreement is a conforming agreement based on MISO's *pro forma* Selected Developer Agreement and met the filing requirement under section 205(c) of the Federal Power Act pursuant to the Commission's Electric Quarterly Report regulations” set forth in 18 C.F.R. Section 35.10b).

¹⁵³ Transmittal letter for Tariff Records Filing, *passim*.

¹⁵⁴ See Tariff Records Filing, Exh. No. DCRT-02, at page DCRT2_00020. After DCRT submitted the Tariff Records Filing, the DCRT APSA was amended to make a change concerning the commercial operation date that is not relevant to the discussion above.

The DCRT APSA contains provisions that directly govern the costs DCRT is entitled to recover through its Base TRR, which will be reflected in the CAISO's Regional Access Charge. For example, the APSA includes a cap on the costs of constructing the Project that DCRT can include in its TRR. Specifically, the initial APSA included a construction cost cap of approximately \$242 million (and the amended APSA includes a cost cap of approximately \$259 million).¹⁵⁵ The APSA also limits DCRT's inclusion in DCRT's TRR costs that DCRT incurs as the result of a route change and includes a limited number of clearly specified exclusions to the cost cap.¹⁵⁶

DCRT's Tariff Records constitute a rate change from the rate on file in the DCRT APSA insofar as DCRT seeks to recover (1) construction costs that far exceed the express construction cost cap in the APSA and (2) other costs in excess of the cost cap that do not fall under any of the cost cap exclusions in the APSA.¹⁵⁷ Because DCRT seeks to include in its Base TRR costs that are higher than the level specified in the DCRT APSA, as well as costs that are not permitted under the APSA, its Tariff Records constitute a rate change from the rate on file in the DCRT APSA. Failure to uphold the DCRT APSA and to treat DCRT's Tariff Records as a rate change would allow DCRT, and any other similarly situated Approved Project Sponsor, to evade any binding cost caps and cost containment measures they agreed to in the competitive solicitation process

¹⁵⁵ See *id.* at pages DCRT2_00049 and DCRT2_00077.

¹⁵⁶ See *id.* at pages DCRT2_00077-00079.

¹⁵⁷ The CAISO expects these and other issues regarding the DCRT APSA to be resolved by the ultimate outcome of the hearing the September 2023 Hearing Order authorized.

by simply filing an “initial rate” that ignores any such agreed-to commitments. The *Trans Bay* case the Commission relies on in its January 2026 Order did not involve a previously filed APSA (or any APSA) that established binding cost cap and cost containment measures that governed the TRR and cost recovery for the project at issue in that case.

E. Applicable Precedent Supports the Finding the DCRT Tariff Records Filing Is Not an Initial Rate Filing

In addition to the evidence presented in this DCRT proceeding, applicable precedent supports the Commission’s findings in the September 2023 Hearing Order and the June 2025 Order that the Tariff Records constitute a change in rate rather than an initial rate, which findings the January 2026 Order erroneously modified and set aside. As discussed below, the Commission is well aware of this precedent and accepts initial rate filings without suspension while also frequently initiating FPA section 206 proceedings to examine the justness and reasonableness of the initial rate. This is not what the Commission did in this consolidated proceeding. Instead, in the September 2023 Hearing Order, the Commission accepted DCRT’s proposed TO Tariff and Base TRR and suspended them for a nominal period subject to refund and to the outcome of hearing and settlement judge procedures.¹⁵⁸

Although it is understandable to question whether a filing that is intended to provide rate recovery through an initial Base TRR is an “initial rate” filing, the Commission’s determination in the September 2023 Hearing Order to not treat

¹⁵⁸ September 2023 Hearing Order at P 1 and Ordering Paragraph (A).

DCRT's Tariff Records filing as an initial rate filing is wholly consistent with precedent.

In the *Middle South Energy* decision, the D.C. Circuit gave weight to legislative history confirming that, under FPA section 205, the Commission has authority to order refunds for a change that results in an increase in rates: “If the investigation cannot be completed with [sic] the 5 months’ period, the new rate may go into effect, *but in case the change results in an increase in rates the Commission may require the utility to make refunds if the increase is not approved.*”¹⁵⁹ The DCRT Tariff Records Filing will have the exact impact discussed in *Middle South Energy*—it will increase rates, specifically by increasing the CAISO Transmission Access Charge.

This precedent confirms the Commission was correct in the September 2023 Hearing Order to require DCRT to make refunds if the increase to the Transmission Access Charge resulting from DCRT's proposed Base TRR is not approved in these proceedings. The Tariff Records Filing is a Transmission Revenue Requirement filing whose approval would result in an increase to the rates paid by all market participants withdrawing energy from the CAISO controlled grid.

The *Middle South Energy* court also noted the D.C. Circuit has upheld the Commission's broad view of what constitutes a changed rate, finding “[t]his is

¹⁵⁹ *Middle South Energy*, 747 F.2d at 770 (quoting *Pub. Util. Holding Cos.: Hearings on H.R. 5423 Before the House Comm. on Interstate & Foreign Commerce*, 74th Cong., 1st Sess. 33-34 (1935); *Pub. Util. Holding Co. Act of 1935: Hearings on S. 1725 Before the Senate Comm. on Interstate Commerce*, 74th Cong., 1st Sess. 41-42 (1935) (emphasis and use of “[sic]” added by court).

precisely the type of question we must leave to the technical expertise of the Commission; we will not substitute our judgment unless the Commission's judgment is unreasonable and cannot be rationally reconciled with the terms of the Act."¹⁶⁰ Although the September 2023 Hearing Order did not explicitly address the question of whether the DCRT Tariff Records constitute an initial or a changed rate, the only reasonable reading of the September 2023 Hearing Order supports the conclusion the Commission exercised its "technical expertise" to find the Tariff Records to be a changed rate.¹⁶¹

As noted in both the June 2025 Order and the January 2026 Order,¹⁶² *SWEPCO* established the test the Commission uses to determine whether or not a rate filing is an "initial rate filing." The Commission held:

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. Thus, 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.¹⁶³

This two-part *SWEPCO* test for identifying an initial rate filing remains in effect today.¹⁶⁴

The DCRT rate filing in these proceedings meets neither part of the test. The service being provided over the facilities covered by the DCRT Base TRR

¹⁶⁰ *Middle South Energy*, 747 F.2d at 771 (quoting *FP&L*, 617 F.2d at 815).

¹⁶¹ See *supra* Section IV.A of this Request for Rehearing.

¹⁶² June 2025 Order at P 27; January 2026 Order at P 15.

¹⁶³ *SWEPCO*, 39 FERC at 61,293.

¹⁶⁴ See, e.g., *Tri-State Generation & Transmission Ass'n Inc.*, 174 FERC ¶ 61,009, at P 31 n.36 (citing *SWEPCO*, 39 FERC at 61,293).

filing is not a new service, but rather the existing transmission service provided to customers under the CAISO Tariff. The Commission has long recognized the CAISO is the transmission provider providing service over the facilities placed under its operational control by Participating Transmission Owners like DCRT.¹⁶⁵ DCRT is not the entity providing transmission service, and DCRT has no customers.

The customers taking the service that is the subject of the DCRT Tariff Records Filing are existing transmission customers of the CAISO, not DCRT—*i.e.*, all market participants withdrawing energy from the CAISO controlled grid and paying the CAISO's TAC. This is confirmed by section 4 of DCRT's proposed TO Tariff, which states, "Transmission 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 June 2025 Order correctly found that in these proceedings, "there is not a new service."¹⁶⁶ The June 2025 Order quoted that same proposed TO Tariff provision in finding that "[u]pon the effective date of DCRT's Tariff Records, DCRT began providing a service to customers (that is, transmission customers in

¹⁶⁵ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 112 FERC ¶ 61,009, at P 4 (2005) ("CAISO is the Transmission Provider that exercises operational control over the facilities owned by, *among others*, SoCal Edison, PG&E, and SDG&E.") (emphasis added); *Cal. Indep. Sys. Operator Corp.*, 108 FERC ¶ 61,104, at P 9 (2004) ("CAISO is the Transmission Provider which exercises operational control over the facilities turned over to CAISO by, *among others*, the three PTOs subject to the jurisdiction of the Commission (SoCal Edison, PG&E, and SDG&E).") (emphasis added); see also section 2.1 of the CAISO Tariff, providing in relevant part "The CAISO shall, subject to Sections 2.2 and 3, provide to all Eligible Customers open and nondiscriminatory access to the CAISO Controlled Grid regardless of the locations of their connections to the CAISO Controlled Grid in accordance with the terms of this CAISO Tarif"

¹⁶⁶ June 2025 Order at P 29.

CAISO) that had already been receiving the same jurisdictional service (transmission service over the CAISO-controlled transmission system) with costs recovered through the CAISO's TAC."¹⁶⁷ In addition, the customers taking the service that is the subject of the Tariff Records Filing are existing transmission customers of the CAISO, *i.e.*, all market participants withdrawing energy from the CAISO controlled grid and paying the CAISO's Transmission Access Charge.

Ignoring the well-reasoned analysis the Commission previously provided in the June 2025 Order, the January 2026 Order simply states that because "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 . . . DCRT could not, as a practical matter, have been offering an existing service, nor could it have served existing customers."¹⁶⁸ This conclusory statement ignores both the Commission's prior analysis and the fact that the service being offered on the DCRT Project is the transmission service that has been offered under the CAISO Tariff for decades. The January 2026 Order also ignores its own findings in the June 2025 Order that the only customers receiving service over the DCRT Project are existing customers—Eligible Customers under the CAISO Tariff—as acknowledged by DCRT itself in section 4 of its TO Tariff quoted above. The Commission's unexplained departure from its prior analysis is legal error which must be reversed.

¹⁶⁷ *Id.* at P 30 & n.79.

¹⁶⁸ January 2026 Order at P 17.

Even assuming, solely for the sake of argument, the Commission were to find one or the other part of its two-part *SWEPCO* test to be satisfied in these proceedings, that would not be enough for the Commission to find the DCRT Tariff Records Filing to be an “initial rate filing.”¹⁶⁹ When establishing the *SWEPCO* test, the Commission also established, “Where the utility provides the service pursuant to a standard tariff already on file with the Commission, there should be no question as to whether the service is the same.”¹⁷⁰ In these consolidated proceedings, the service being provided over the Project is being provided to customers pursuant to the CAISO Tariff already on file with the Commission.

F. The January 2026 Order Erred by Relying on *Trans Bay* to the Exclusion of Other More Relevant Commission Precedent

In the January 2026 Order, the Commission found that, “[w]hile we acknowledge the Commission has 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,” the *Trans Bay* orders were the sole precedent relevant to the instant proceedings.¹⁷¹ There are several reasons why the Commission was incorrect to rely on *Trans Bay* to find that DCRT’s Tariff Records constitute an initial rate.

First, the Commission ignored the fact that parties sought rehearing of

¹⁶⁹ *SWEPCO.*, 39 FERC at 61,293.

¹⁷⁰ *Id.*

¹⁷¹ January 2026 Order at PP 16-17 (citing *Trans Bay*).

Trans Bay I, which led to the issuance of *Trans Bay II*.¹⁷² The Commission was consequently free to modify *Trans Bay I*, in accordance with FPA section 313(a), by finding that “the filing submits an initial rate” and instituting a proceeding under FPA section 206 to investigate whether the utility’s proposed rates were just and reasonable.¹⁷³ In contrast, because no party filed a request for rehearing of the September 2023 Hearing Order, FPA section 313(a) prohibits the Commission from modifying or setting aside the September 2023 Hearing Order or any findings therein, which the Commission nevertheless did in the January 2026 Order.

Also, in *Trans Bay II* the Commission: (1) found that the rate in question was an initial rate and (2) explicitly initiated an FPA section 206 proceeding, consistent with the requirements of FPA section 206(b).¹⁷⁴ The Commission did neither of those things in the September 2023 Hearing Order or the May 2024 Consolidation Order. Thus, the Commission erred in finding *Trans Bay* dispositive while ignoring other, more relevant precedent—including but not limited to the nine Commission orders cited in the June 2025 Order as illustrative of “the Commission’s longstanding precedent” supporting the conclusion that “DCRT’s Tariff Records [are] a change in rate.”¹⁷⁵

¹⁷² See *Trans Bay II*, 132 FERC ¶ 61,083, at PP 1, 14-16, 20-22, 26, and Ordering Paragraph (A).

¹⁷³ See *id.* at PP 25, 27.

¹⁷⁴ See *id.* at PP 25-28.

¹⁷⁵ See June 2025 Order at P 30 & n.80 (citing *NextEra Energy Transmission W., LLC*, 154 FERC ¶ 61,009 (2016); *Morongo Transmission LLC*, 174 FERC ¶ 61,171 (2021); *DesertLink, LLC*, 158 FERC ¶ 62,189 (2017); *DesertLink, LLC*, 161 FERC ¶ 61,126 (2017); *MidAm. Transco Cent. Cal. Transco, LLC*, 147 FERC ¶ 61,179 (2014); *TransCanyon DCR, LLC*, 152 FERC ¶

Another important difference is that, as explained above,¹⁷⁶ *Trans Bay* did not involve a previously filed APSA (or any APSA) that established binding cost cap and cost containment measures that governed the TRR and cost recovery for the project at issue in that proceeding. As such, the project owner in *Trans Bay* was not seeking to deviate from its obligations under a previously filed, applicable rate.

The CAISO acknowledges that *Trans Bay* and a handful of other cases involving initial Transmission Owner Tariff filings with TRR submissions in which the Commission has treated the filing as an initial rate filing.¹⁷⁷ However, these cases are exceptions to the Commission's routine practice in treating such filings by new Participating Transmission Owners in the CAISO.

The January 2026 Order states that "except for in *Trans Bay*, the Commission has not addressed whether the TRR filing was an initial or changed rate."¹⁷⁸ This statement ignores the numerous orders where it is clear the Commission treats an initial TRR filing as a change in rate. The Commission routinely treats initial submissions of a TRR by a new CAISO Participating TO under a Transmission Owner Tariff as a changed rate. Such new Participating TO filings have become common in recent years as the addition of competition to the CAISO transmission planning process has resulted in Approved Project

61,017 (2015); *GridLiance W. Transco LLC*, 158 FERC ¶ 62,136 (2017); *GridLiance W. Transco LLC*, 160 FERC ¶ 61,003 (2017); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,306 (2008)).

¹⁷⁶ See *supra* Section IV.D of this Request for Rehearing.

¹⁷⁷ See, e.g., *Trans Bay II*, 132 FERC ¶ 61,083, at PP 25-28; *Citizens S-Line Transmission LLC*, 178 FERC ¶ 61,067, at P 28 (2022).

¹⁷⁸ January 2026 Order at P 17.

Sponsors like DCRT being selected to build new transmission projects.

For example, in *NEET West*, the applicant, an Approved Project Sponsor selected to build a 230 kV transmission project in the CAISO, filed a proposed return on equity (ROE) and Transmission Owner Tariff with an initial TRR under FPA section 205.¹⁷⁹ The Commission accepted the NEET West Transmission Owner Tariff, suspended it for a nominal period, and set it for refund.¹⁸⁰ Under the precedent discussed above, the Commission would not have had the authority to suspend the NEET West Transmission Owner Tariff with an initial Transmission Revenue Requirement if the Commission concluded the NEET West filing was an initial rate filing. The Commission found NEET West's requested base ROE raised issues of material fact and set it for hearing and settlement judge procedures.¹⁸¹ The Commission did not initiate an FPA section 206 proceeding in the *NEET West* case.

Similarly, in a case where Morongo Transmission LLC (Morongo Transmission) filed a proposed Transmission Owner Tariff establishing an initial Transmission Revenue Requirement, the Commission accepted the Morongo Transmission TO Tariff, suspended it for a nominal period and set it for refund.¹⁸² In *Morongo Transmission*, the Commission did not treat Morongo Transmission's

¹⁷⁹ *NextEra Energy Transmission W., LLC*, 154 FERC ¶ 61,009 (*NEET West*). The applicant, NextEra energy Transmission West, LLC (*NEET West*), also filed a request to recover certain transmission rate incentives pursuant to FPA sections 205 and 219 and Commission Order No. 679.

¹⁸⁰ *Id.* at P 1 and Ordering Paragraph (C).

¹⁸¹ *Id.* at P 96.

¹⁸² *Morongo Transmission LLC*, 174 FERC ¶ 61,171, at P 1 and Ordering Paragraph (B) (*Morongo Transmission*).

filing of an initial TO Tariff as an initial rate filing which cannot be suspended, nor did the Commission initiate an FPA section 206 proceeding.

Both *NEET West* and *Morongo Transmission* led to settlement agreements on an appropriate ROE.

The following is a sampling of other orders where the Commission accepted Transmission Owner Tariff filings establishing an initial Transmission Revenue Requirement, suspended them, and set them for hearing and settlement procedures subject to refund without treating them as initial rate filings:

- *DesertLink, LLC*, 158 FERC ¶ 62,189 (delegated letter order initially setting formula to calculate annual Transmission Revenue Requirement for hearing subject to refund);
- *DesertLink, LLC*, 161 FERC ¶ 61,126 (subsequent Commission order setting formula to calculate annual Transmission Revenue Requirement for hearing);
- *MidAm. Cent. Ca. Transco, LLC*, 147 FERC ¶ 61,179;
- *TransCanyon DCR, LLC*, 152 FERC ¶ 61,017;
- *GridLiance W. Transco LLC*, 158 FERC ¶ 62,136 (delegated letter order initially setting formula to calculate annual Transmission Revenue Requirement for hearing subject to refund);
- *GridLiance W. Transco LLC*, 160 FERC ¶ 61,003 (subsequent Commission order setting formula to calculate annual Transmission Revenue Requirement for hearing); and
- *Startrans IO, L.L.C.*, 122 FERC ¶ 61,306.¹⁸³

¹⁸³ DCRT and Startrans IO, L.L.C. are both indirectly owned by common parent companies, Lotus Infrastructure, LLC, and Starwood Energy Group Global, L.L.C. See *Beaver Falls, L.L.C., et al.*, Notice of Non-Material Change in Status, Docket No. ER15-1456-000, at 3 (Apr. 22, 2024); *Marco DM Holdings, L.L.C.*, Triennial Market Power Update for the Southwest Power Pool Region, Docket No. ER18-920-009, at 3-4, n.8 (Dec. 23, 2021).

Many of these initial Transmission Owner Tariff and Transmission Revenue Requirement proceedings result in settlements. An older proceeding highlights how a Transmission Owner Tariff filing with an initial Transmission Revenue Requirement is treated in a case that went to a full hearing, initial decision, and Commission order on that initial decision. In 2004, the CAISO selected Trans-Elect Inc. (Trans-Elect), together with Pacific Gas and Electric Company (PG&E), to build an 83-mile, 500 kV transmission line within the Path 15 transmission corridor to relieve capacity constraints in California, and make related modifications to two PG&E substations (Path 15 Project).¹⁸⁴ In January 2003, Trans-Elect had become a Participating Transmission Owner in the CAISO.¹⁸⁵

On October 4, 2004, the Commission received Trans-Elect's Transmission Revenue Requirement and Transmission Owner Tariff filing (Path 15 Filing), which it treated as a changed rate pursuant to FPA section 205 and Section 35.13 of the Commission's regulations.¹⁸⁶ The Commission: (1) found the Path 15 Filing had not been shown to be just and reasonable;¹⁸⁷ (2) found the Transmission Revenue Requirement and Transmission Owner Tariff filing raised issues of material fact that could not be resolved based on the record before it and were more appropriately addressed in hearing and settlement judge

¹⁸⁴ *Trans-Elect NTD Path 15, LLC*, 109 FERC ¶ 61,249, at P 2 (2004) (*Trans-Elect*).

¹⁸⁵ *See Cal. Indep. Sys. Operator Corp.*, Commission Letter Order, Docket No. ER03-1217-000 (Oct. 14, 2003).

¹⁸⁶ *Trans-Elect* at P 6 (citing 18 C.F.R. § 35.13 (2004) and Ordering Paragraph (B)).

¹⁸⁷ *Id.* at P 31.

procedures;¹⁸⁸ (3) suspended the rate for a nominal period to make it effective upon commencement of commercial operation of the Path 15 Project, subject to refund;¹⁸⁹ and (4) established a hearing to be held in abeyance to provide time for settlement judge procedures.¹⁹⁰ The Commission did not establish an FPA section 206 proceeding for the Path 15 Filing.

The Commission maintained that the burden of proof rested with the applicant, Trans-Elect, in its Order on Initial Decision and Order Denying Rehearing.¹⁹¹ The Commission ultimately required refunds over a period longer than the fifteen-month period for which refunds can be awarded under FPA section 206.¹⁹² The orders in the *Trans-Elect* proceeding did not expressly or implicitly treat Trans-Elect's rate as an initial rate, because the orders did not establish a section 206 proceeding or apply the section 206 fifteen-month refund limitation. The CAISO respectfully submits the *Trans-Elect* proceeding can serve as a model for the Commission's findings on the issues addressed in this Request for Rehearing, instead of the *Trans Bay* case.

In the January 2026 Order, the Commission instituted a new FPA section 206 docket (Docket No. EL26-34-000) and consolidated it with existing Docket

¹⁸⁸ *Id.* at P 30.

¹⁸⁹ *Id.* at P 31.

¹⁹⁰ *Id.* at P 32.

¹⁹¹ *Trans-Elect NTD Path 15, LLC*, Order on Initial Decision, 117 FERC ¶ 61,214, at P 58 (2006); *Trans-Elect NTD Path 15, LLC*, Order Denying Rehearing, 119 FERC ¶ 61,093, at P 16 (2007).

¹⁹² The Commission approved a refund period for charges that would have been assessed from December 22, 2004 through March 31, 2007. See *Trans-Elect NTD Path 15, LLC*, Refund Report, Docket No. ER05-17-009 (Sep. 27, 2007); *Atl. Path 15, LLC*, Docket No. ER05-17-009 (Commission letter order accepting Refund Report, Dec. 13, 2007).

Nos. ER23-2309 and ER24-1394 “for purposes of hearing.”¹⁹³ As explained above, the Commission erroneously used *Trans Bay* as a model for the instant DCRT proceeding. On rehearing, the Commission should reverse its decision to institute FPA section 206 proceedings based on the *Trans Bay* example.¹⁹⁴

The Commission’s decision in the January 2026 Order to establish a refund effective date based on its *Chehalis* precedent is also ill-founded.¹⁹⁵ The rationale the Commission gave for its decision was that “[h]ere, like in *Chehalis*, the Commission erroneously accepted and suspended DCRT’s Tariff Records, and will use our section 309 authority to remedy this error.”¹⁹⁶ For the reasons explained above, however, the Commission made no error in accepting and suspending DCRT’s Tariff Records in the September 2023 Hearing Order, as confirmed in the June 2025 Order.

Importantly, the *Chehalis* precedent involved a case where, unlike here, the underlying Commission orders were the subject of timely rehearing requests and appeals.¹⁹⁷ None of the initial Commission orders in *Chehalis* were final and non-appealable orders like the September 2023 Hearing Order. Therefore, FPA section 313(a) did not preclude the Commission from modifying or setting aside the initial Commission orders in *Chehalis*.

Furthermore, *Chehalis* differed from the instant DCRT proceeding in that

¹⁹³ January 2026 Order at PP 18-19.

¹⁹⁴ See *id.* at PP 14, 16, 18.

¹⁹⁵ See *id.* at P 20 (citing *Chehalis*, 171 FERC ¶ 61,188, at PP 44, 52, *order on reh’g*, 172 FERC ¶ 61,232).

¹⁹⁶ January 2026 Order at P 20.

¹⁹⁷ See *Chehalis*, 171 FERC ¶ 61,188, at PP 2-9.

Chehalis remained an FPA section 205 case, for which the Commission did not establish a new FPA section 206 docket and which did not require integration into an ongoing hearing (the hearing in the case had ended years before the *Chehalis* orders were issued in 2020). The CAISO is unaware of any case in which the Commission required consolidation of a new FPA section 206 docket with an existing FPA section 205 docket currently in the midst of a hearing, as it did in this proceeding. When the Commission has required consolidation of a new FPA section 206 docket with an existing FPA section 205 docket, it has been prior to the start of the hearing. In fact, the Commission took steps in some of those cases to ensure it did not disrupt even the pre-hearing proceedings.¹⁹⁸ The Commission has done none of those things in the instant proceedings.

G. Even if the September 2023 Hearing Order Were Unclear, Policies Underlying the FPA Require Resolving Ambiguity by Finding DCRT Proposed to Change an Existing Rate

For the reasons explained above, the September 2023 Hearing Order clearly treated DCRT's Tariff Records as a change in rates and did not find they constitute an initial rate filing. However, even assuming for the sake of argument there was any ambiguity on these matters stemming from the September 2023 Hearing Order, such an ambiguity should be resolved by finding the September 2023 Hearing Order determined DCRT proposed a change to its existing rate

¹⁹⁸ See, e.g., *Basin Elec. Power Coop.*, 189 FERC ¶ 61,162, at PP 27, 30, 39, and Ordering Paragraph (F) (2024); *Basin Elec. Power Coop.*, 189 FERC ¶ 63,020 (2024); *Entergy Ark., LLC*, et al., 185 FERC ¶ 61,109, at PP 2, 20, and Ordering Paragraph (D) (2023); *Alliance Pipeline L.P.*, 160 FERC ¶ 61,286, at P 12 (2017); *Pac. Gas & Elec. Co.*, 160 FERC ¶ 61,135, at P 18 and Ordering Paragraph (D) (2017); *Pac. Gas & Elec. Co.*, 109 FERC ¶ 61,158, at PP 1, 17, 19, and Ordering Paragraph (C) (2004).

rather than that DCRT proposed an initial rate. That is the only way to satisfy the Commission's fundamental obligation to ensure the availability of energy to customers at a reasonable cost. In the June 2025 Order, the Commission stated that "[b]ecause the FPA does not expressly define the terms 'initial' and 'changed' rates, the Commission has drawn the boundary between the two with an eye toward protecting consumers from excessive or exploitative rates, in keeping with Congressional intent."¹⁹⁹ The January 2026 Order departs from this precedent without explanation or justification.

Longstanding court and Commission precedent makes clear the FPA is primarily a consumer protection statute: "The primary purpose of the [FPA] legislation is the protection of consumers from excessive rates and charges."²⁰⁰ The Commission's broad definition of a change of rate it has employed since 1987 "is consistent with and serves to further [these] policies which underlie the

¹⁹⁹ June 2025 Order at P 27 (citing *Westar Generating, Inc.*, 95 FERC ¶ 61,137, at 61,430; *SWEPCO*, 39 FERC at 61,293) (also quoting statement on cited page of *SWEPCO* that "[t]aking a broad view as to what constitutes a change in rate clearly serves, by making filings subject to the Commission's suspension and refund authority under section 205(e) of the FPA, to protect consumers of electricity from excessive or exploitative rates.").

²⁰⁰ *SWEPCO*, 39 FERC at 61,293 (citing *Towns of Alexandria v. FPC.*, 555 F.2d 1020, 1028 (D.C. Cir. 1977); *Mun. Light Bds. v. FPC.*, 450 F.2d 1341, 1348 (D.C. Cir. 1971); *Atl. Ref. Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 388 (1959); *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 610 (1944)). See also, e.g., *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 262 (2016) (explaining that "the FPA's core purposes [include] protecting against excessive prices and ensuring effective transmission of electric power") (internal quotation marks omitted); *Pa. Water & Power Co.*, 343 U.S. 414, 418 & n.5 (1952) ("A major purpose of the whole [Federal Power] Act is to protect consumers against excessive prices," as evidenced by fact that "section 205 of Part II [of the FPA] provides that 'All rates and charges . . . shall be just and reasonable . . .'"); *Xcel Energy Servs. v. FERC*, 815 F.3d 947, 952 (2016) ("It is long-established that the "primary aim [of the FPA] is the protection of consumers from excessive rates and charges.") (internal quotation marks omitted and brackets added by the court); *Elec. Dist. No. 1 v. FERC*, 774 F.2d 490, 492-93 (D.C. Cir. 1985) ("We agree with petitioners, since we think the provision must be read in light of the Federal Power Act's primary purpose of protecting the utility's customers."); *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 190 FERC ¶ 61,184, at P 94 (2025) (finding that "making customers whole through the payment of interest is consistent with the FPA's primary purpose of consumer protection").

FPA” and does so “by making filings subject to the Commission’s suspension and refund authority under section 205(e) of the FPA, to protect consumers of electricity from excessive or exploitative rates.”²⁰¹ By making the Tariff Records subject to the Commission’s suspension and refund authority, the September 2023 Hearing Order fulfilled the consumer protection policies underling the FPA and protected consumers from excessive or exploitative rates.

Treating the Tariff Records as an initial rate—as the January 2026 Order erroneously does—limits the Commission’s refund authority and shifts the burden of proof, thereby exposing customers to rates that have not been shown to be just and reasonable in direct opposition to the main purpose of the FPA.²⁰² The January 2026 Order states that a refund effective date of June 12, 2024 established under FPA section 206 “provides the maximum protection to consumers,”²⁰³ but in fact what provides the maximum protection to consumers is making DCRT’s Tariff Records subject to FPA section 205 pursuant to the findings in the September 2023 Hearing Order and the June 2025 Order. Indeed, the January 2026 Order is silent as to the length or refund protection afforded to consumers in the section 206 proceeding the order established, but if the standard statutory fifteen-month refund limitation applies, any retroactive refund protection to consumers in the section 206 proceeding ended in September 2025, exposing consumers to unjust and unreasonable rates for well

²⁰¹ *SWEPCO*, 39 FERC at 61,293.

²⁰² With DCRT energizing the Project and turning it over to CAISO Operational Control, California ratepayers have been paying the Transmission Access Charge including DCRT’s Base TRR since June 12, 2024.

²⁰³ January 2026 Order at P 20.

over a year before the Commission can be expected to act on an initial decision in these proceedings in 2027.

This case is one where consumer protection interests are paramount. 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 between DCRT and the CAISO. In the September 2023 Hearing Order, then-Commissioner Christie highlighted the DCRT APSA cost cap in his concurring opinion, noting:

the APSA, to which DCR Transmission agreed, originally “cost-capped” the Project at \$242 million. The APSA was later amended to increase the Project’s cost cap to \$259 million. Now DCR Transmission is seeking approximately \$553 million in cost recovery, more than double the original cost cap and almost double even the amended increased cost cap. . . . And if “cost caps” are not expected to be binding, one must also question their purpose, given that the Project’s agreed-upon cost containment mechanisms were the reason why CAISO selected the Project in the first place.²⁰⁴

Given these consumer interests, the only appropriate resolution of any hypothetical ambiguity in the September 2023 Hearing Order for the Commission to apply its broad definition of a change in rate and make the Tariff Records subject to the Commission's suspension and refund authority under FPA section 205(e), consistent with the September 2023 Hearing Order and the June 2025 Order, to protect consumers of electricity from excessive or exploitative rates. The findings in the January 2026 Order must be reversed because they ignore these key aspects of those earlier Commission orders.

²⁰⁴ September 2023 Hearing Order, separate concurring statement of Commissioner Christie at P 4.

Furthermore, under the expansive approach to identifying what constitutes an initial rate filing adopted in the January 2026 Order, every filing by a new transmission developer to recover its Transmission Revenue Requirement, even under existing regional transmission organization (RTO) and independent system operator (ISO) rates, will be treated as an “initial rate filing” which the Commission must accept and which can only be examined in the context of an FPA section 206 proceeding.

Not only is this expansive approach to identifying initial rate filings contrary to the “broadened definition of a change in rate” the Commission has employed since 1987,²⁰⁵ it also is inconsistent with the objectives of Order No. 1000. The Commission explained that Order No. 1000 demonstrated “a reasonable expectation that competition in transmission development may have some beneficial impact on rates.”²⁰⁶ As the Commission found, “[f]ederal rules should not prevent consumers from being able to benefit from the full range of advantages that competition can provide, which the preservation of barriers to entry does not allow.”²⁰⁷

Under the approach adopted in the January 2026 Order, however, if a new transmission developer is selected in an ISO or RTO planning process to build a transmission project based in whole or in part on cost containment commitments,

²⁰⁵ See *SWEPCO*, 39 FERC at 61,293.

²⁰⁶ See *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000-A, 139 FERC ¶ 61,132, at PP 76-90 (2012).

²⁰⁷ *Id.* at P 82. See also *id.* at P 179 (“We also believe, as discussed in Order No. 1000 and herein, that the nonincumbent transmission developer reforms will lead to more competition among developers, which in turn will lead to the identification of more efficient and cost-effective transmission facilities.”).

that developer is still entitled to require the Commission accept a Transmission Revenue Requirement based on costs dramatically in excess of the developer's agreed-to cost cap—a cap that most likely enabled it to be awarded the project ahead of other bidders.

Some ISOs and RTOs may not have contractual protections separate from the refund protections of the FPA comparable to the provisions of the CAISO APSA. In such regions, treating a Transmission Revenue Requirement filing of a new transmission developer as an initial rate filing in all circumstances could mean that consumers are not fully protected from paying rates that exceed the developer's cost cap. Litigating a new Transmission Revenue Requirement through discovery, testimony, hearings, briefs, an initial decision, and an ultimate Commission order is likely to take longer than the maximum fifteen-month refund period allowed under FPA section 206. As such, consumers could be required to pay excessive or exploitative rates based on costs many times in excess of the applicable cost cap at least for some period of time.

Even in regions where cost caps are fully enforceable by contract, the expansive approach of identifying what constitutes an initial rate filing adopted in the January 2026 Order will shift the burden of proof to the Commission, customer groups, and the applicable ISOs and RTOs to demonstrate that new transmission developer revenue requirement filings that exceed those cost caps are unjust and unreasonable. This shift of the burden of proof is both unjustified and contrary to the objectives of the Commission's policies favoring competition in transmission development.

H. The January 2026 Order Violates the Administrative Procedure Act

The January 2026 Order violates the Administrative Procedure Act (APA). As relevant here, the APA requires a court to “hold unlawful and set aside agency action” if it is (1) “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” (2) “without observance of procedure required by law,” or (3) “unsupported by substantial evidence.”²⁰⁸ The January 2026 Order violates those APA requirements.

First, the January 2026 Order is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law. The Commission is required “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.”²⁰⁹ Commission action is arbitrary and capricious if “the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation . . . that runs counter to the evidence before [it], or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”²¹⁰ As explained above, the January 2026 Order improperly seeks to set aside foundational findings in the September 2023 Hearing Order as confirmed in the June 2025 Order. As

²⁰⁸ 5 U.S.C. § 706(2)(A), -(D), -(E).

²⁰⁹ *Motor Vehicle Mfrs. Ass'n, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks omitted).

²¹⁰ *Id.* Furthermore, “[a]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from tolerably terse to intolerably mute.” *Hatch v. FERC*, 654 F.2d 825, 834 (D.C. Cir. 1981) (quoting *Greater Bos. Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971)).

explained at length above, all evidence in this proceeding supports the conclusion the Commission reached in the September 2023 Order that DCRT's Tariff Records constitute a change in rate and thus DCRT bears the burden of proof under FPA section 205. The June 2025 Order affirmed this conclusion based on the same evidence. Contrary to that evidence, the January 2026 Order instead found the Tariff Records constitute an initial rate.²¹¹

The January 2026 Order also failed to observe procedure required by law. As explained above, the January 2026 Order effectively modified and set aside the September 2023 Hearing Order as to its findings that the Tariff Records are a change in rate and the consequence that DCRT bears the burden of proof under FPA section 205—for which no party requested rehearing—in violation of the procedural requirements of FPA section 313(a).²¹² The January 2026 Order also erred by allowing the Presiding Judge to reopen findings in the final and non-appealable September 2023 Hearing Order that were not set for hearing.²¹³

In addition, the January 2026 Order is unsupported by substantial evidence. As explained above, applicable federal court and Commission precedent supports finding the Tariff Records Filing is not an initial rate filing.²¹⁴ Moreover, the January 2026 Order erred by relying on *Trans Bay* to the exclusion of other more relevant Commission precedent.²¹⁵ Even assuming for the sake of

²¹¹ See *supra* Sections IV.A and IV.D of this Request for Rehearing.

²¹² See *supra* Section IV.B of this Request for Rehearing.

²¹³ See *supra* Section IV.C of this Request for Rehearing.

²¹⁴ See *supra* Section IV.E of this Request for Rehearing.

²¹⁵ See *supra* Section IV.F of this Request for Rehearing.

argument the September 2023 Hearing Order was unclear, policies underlying the FPA require resolving ambiguity by finding DCRT proposed to change an existing rate.²¹⁶

In sum, the January 2026 Order violates various requirements of the APA. The Commission should reverse the January 2026 Order on rehearing.

I. The CAISO and Other Participants Reasonably and Detrimentially Relied on the Commission's Findings in these Proceedings Before the January 2026 Order Upended the Proceedings

The Commission should reverse the January 2026 Order due to the reasonable and detrimental reliance of ratepayers, Commission Trial Staff, the CAISO and other participants in these proceedings for over two years on the Commission's consistent findings that DCRT bears the burden of proof under FPA section 205, which carried over into the hearing itself until upended by the contrary findings in the January 2026 Order. The Commission was required to consider the disruptive impact of its dramatic change in foundational findings in these proceedings. "Reliance' is defined as 'dependence or trust by a person, [especially] when combined with action based on that dependence or trust.'"²¹⁷ It is unquestionable these participants reasonably relied upon the Commission's earlier and consistent findings. "[T]he longer and more consistently an agency has followed one view of the law, the more likely it is that private parties have

²¹⁶ See *supra* Section IV.G of this Request for Rehearing.

²¹⁷ *Branch St. Solar Partners, LLC*, 194 FERC ¶ 61,124, at P 38 (2026) (quoting *Black's Law Dictionary* (12th ed. 2024)).

reasonably relied to their detriment on that view.”²¹⁸ In these circumstances, it would not be just and reasonable for the Commission to maintain the change to its findings in the January 2026 Order.

Specifically, for two years and four months—from September 2023 until January 2026—ratepayers, Commission Trial Staff, the CAISO and other participants in the proceedings reasonably relied on the Commission’s findings that DCRT bore the burden of proof under FPA section 205 to show its Tariff Records are just and reasonable. As explained above,²¹⁹ the September 2023 Hearing Order suspended the Tariff Records pursuant to FPA section 205 and established hearing and settlement judge procedures. Participants in the proceedings engaged for a year and a half in ultimately unsuccessful settlement discussions in reliance on the FPA section 205 refund protection afforded by the September 2023 Hearing Order. After the settlement judge procedures were terminated and the hearing procedures were established, the June 2025 Order confirmed the findings in the September 2023 Hearing Order, including the findings that the Tariff Records constitute a change in rate and thus DCRT bore the burden of proof under FPA section 205.

Starting on July 30, 2025, DCRT—as the party with the burden of proof in the hearing—submitted direct testimony, then the CAISO and other parties submitted answering testimony and cross-answering testimony (*i.e.*, testimony

²¹⁸ *Clark-Cowlitz Joint Operating Agency v. FERC*, 826 F.2d 1074, 1082-83 (D.C. Cir. 1987) (citing *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481, 495-502 (1968); *NLRB v. Majestic Weaving Co.*, 355 F.2d 854, 861 (2d Cir. 1966)).

²¹⁹ See *supra* Sections II.A and IV.A of this Request for Rehearing.

responding solely to the answering testimony submitted by parties other than DCRT), and lastly DCRT submitted rebuttal testimony, all in accordance with the procedural schedule the Presiding Judge had established in the proceedings.²²⁰ The hearing began on January 13, 2026 and continued for three weeks before the Commission issued the January 2026 Order.

The January 2026 Order flipped the burden of proof to the detriment of the participants other than DCRT by now requiring them to bear the burden of proof under FPA section 206 to show the Tariff Records are unjust and unreasonable. This Commission action upended the proceedings. On February 4, 2026, the CAISO, DCRT, and other parties filed an unopposed joint motion to revise the procedural schedule in light of the findings in the January 2026 Order, which the Presiding Judge granted the next day. Pursuant to the revised procedural schedule, the hearing is currently in recess until April 8, 2026. In the meantime, the CAISO and other participants challenging DCRT's Tariff Records under their new FPA section 206 burden of proof may submit rebuttal testimony.²²¹ FPA section 206 expressly only provides fifteen months of refund protection to ratepayers. Absent action by the Commission under FPA section 309 to extend that refund period, that statutory refund protection expired in September 2025—fifteen months after the June 2024 refund effective date established in the January 2026 Order. Intervenors in these proceedings detrimentally relied on the

²²⁰ See *DCR Transmission, L.L.C.*, Order Adopting Procedural Schedule, Docket Nos. ER23-2309-001 and ER24-1394-001 (May 15, 2025); *DCR Transmission, L.L.C.*, Order Waiving Answer Period and Amending Procedural Schedule, Docket Nos. ER23-2309-001 and ER24-1394-001 (June 20, 2025).

²²¹ See *DCR Transmission, L.L.C.*, Order Waiving Answer Period and Adopting Revised Procedural Schedule, Docket Nos. ER23-2309-001, *et al.* (Feb. 5, 2026).

Commission's FPA section 205 actions in the September 2023 Hearing Order and engaged in a year and a half of settlement negotiations with DCRT in an attempt to resolve the issues before the matter was even referred to a hearing judge. Had intervenors known the clock was ticking on their ability to obtain refunds from the excessive rates DCRT proposed because it was a section 206 proceeding (as the Commission ruled for the first time only years later in the January 2026 Order), not a section 205 proceeding, they would certainly have insisted on commencing hearing procedures immediately and not expending a year and a half on ultimately fruitless settlement discussions with DCRT.

The Commission offered no explanation in the January 2026 Order why it felt the need to take the extraordinary step of changing the burden of proof *after the hearing had already commenced* and after DCRT was provided the opportunity to file both direct and rebuttal testimony because DCRT had the burden of proof up until the moment the Commission issued the January 2026 Order. The result was that intervenors only had the opportunity to file answering testimony to DCRT's direct testimony because they did not have the burden of proof. Given the potential for a refund period limitation and the multiple opportunities to refine its case already afforded to DCRT, it is cold comfort to allow intervenors to submit rebuttal testimony to DCRT at this late date – a step that will extend the proceeding and potentially leave intervenors without refund protection for an even longer period of time. Instead, for the reasons explained above, the Commission should reverse the January 2026 Order on rehearing and find it was not just and reasonable.

J. The January 2026 Order Will Adversely Affect the CAISO's Competitive Solicitation Process

If the January 2026 Order is allowed to stand, it will have a chilling effect on the CAISO's competitive solicitation process and stifle competition in transmission development. How the CAISO processes and evaluates bids in the competitive solicitation process will fundamentally change because the January 2026 Order creates two classes of bidders whose cost containment measures will be evaluated differently: (1) those with existing TRRs whose project costs beyond their cost containment measures must be justified by the developer under FPA section 205, and (2) those without existing TRRs whose cost containment measures must be enforced by intervenors challenging excessive cost recovery under the heavier FPA section 206 burden.

The CAISO's competitive solicitation process relies on the bids of project developers seeking the opportunity to build and recover costs for transmission solutions identified in the CAISO's transmission planning process. Any developer that meets the CAISO's qualification requirements can bid for the right to construct these transmission solutions, whether they are public utility transmission developers with existing assets in the CAISO region, or other project developers who do not yet own assets in the CAISO region and thus have no TRR on file. The latter of these—those that would, under the January 2026 Order, eventually file an initial rate—would thus have an additional barrier to competing in the bidding process. Regardless of any cost containment measures included in this latter group's bids and agreed to in their APSAs, any costs spent on developing their projects will be presumed by the Commission to

be just and reasonable and must be challenged by ratepayer intervenors and/or by the CAISO in separate FPA section 206 proceedings.

In a comparative analysis framework that seeks the most cost-effective and efficient bidder, this is a significantly less attractive prospect as it reduces ratepayer protections by shifting the burden for only *some* potential project sponsors to the ratepayer and potentially limiting ratepayer refund protection. The beneficial impact on rates resulting from competition will be undermined if new transmission developers or new special purpose entities can simply ignore any cost containment measures they included in their bids and in their executed APSAs by filing initial Transmission Revenue Requirements that are not subject to the Commission's refund authority under FPA section 205 and that contain costs far in excess of their agreed-to cost caps.

Under the CAISO Tariff, one of the eleven selection factors, and one determined in every solicitation to be a key selection factor, is the binding cost control measures the Project Sponsor agrees to accept and any binding agreement by the Project Sponsor that preclude costs above the cap from being recovered through the CAISO's Transmission Access Charge.²²² These cost containment measures, which can include mechanisms such as cost caps, particular exclusions to the cost caps, or reduced return on equity, among other mechanisms, are currently evaluated by the CAISO on a level playing field, as if they have the same effect on each proposal. If DCRT's Tariff Records are treated as an initial rate and these proceedings continue under FPA section 206,

²²² See Section 24.5.1 of the CAISO Tariff.

the CAISO will be unable to have the same confidence in the cost containment measures bid by new public utility transmission developers, because any future TRR filing would be presumed just and reasonable regardless of any agreed-to measures, and the associated burden of proof would shift onto the CAISO, the Commission, and other intervenors to enforce these measures. The end result will be that the CAISO and other ISOs and RTOs with competitive transmission processes will be less inclined to award projects to any entity that would need to file an initial rate, thus thwarting the Commission's competition goals and depriving ratepayers of the true benefits of competition.

V. Conclusion

For the foregoing reasons, the CAISO respectfully requests that the Commission grant rehearing of the January 2026 Order and grant the relief requested herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the above-referenced dockets, pursuant to the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. this 2nd day of March, 2026.

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