

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

California Independent System Operator
Corporation,

Petitioner,

v.

Federal Energy Regulatory Commission,

Respondent.

No. 26- 1141

PETITION FOR REVIEW

Pursuant to Section 313(b) of the Federal Power Act, 16 U.S.C. § 825l(b), Federal Rule of Appellate Procedure 15(a), and D.C Circuit Rule 15, Petitioner the California Independent System Operator Corporation (CAISO) hereby petitions this Court for review of the following orders of the Federal Energy Regulatory Commission:

- *DCR Transmission, L.L.C.*, Order Addressing Arguments Raised on Rehearing, Setting Aside Prior Order, Instituting Section 206 Proceeding, and Consolidating Proceedings, Docket Nos. ER23-2309-002, ER24-1394-002, EL26-34-000 (cons.), 194 FERC ¶ 61,085 (Jan. 30, 2026) (Attachment A);
- *DCR Transmission, L.L.C.*, Notice of Denial of Rehearing By Operation of Law and Providing for Further Consideration, Docket Nos. ER23-2309-003, ER24-1394-003, EL26-34-001 (cons.), 195 FERC ¶ 62,006 (April 2, 2026) (Attachment B).

CAISO petitions for review of these orders on the grounds that the

Commission's orders are arbitrary and capricious, reflect a failure to engage in reasoned decision-making, are not supported by substantial evidence, and are otherwise contrary to law.

CAISO was a party of record in the underlying Federal Energy Regulatory Commission proceedings, and sought rehearing from the January 30, 2026 Order under 16 U.S.C. § 825l(a).

Because the Commission denied that request for rehearing by operation of law on April 2, 2026, this petition for review is timely. Venue in this Court is proper under 16 U.S.C. § 825l(b).¹

¹ The January 30, 2026 Order reversed two prior FERC orders, *DCR Transmission, L.L.C.*, Order on Interlocutory Appeal, Docket Nos. ER23-2309-001, ER24-1392-001 (cons.), 191 FERC ¶ 61,212 (June 20, 2025); and *DCR Transmission, L.L.C.*, Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, Docket Nos. ER23-2309-001, ER24-1394-001 (cons.), 192 FERC ¶ 61,102 (Aug. 21, 2025). Those previous orders are the subject of a separate petition for review pending in this Court, No. 25-1199, which the Court is currently holding in abeyance. The CAISO previously moved to intervene in that case in support of respondent FERC; that motion is pending. Because FERC reversed those prior orders, the CAISO is now opposite FERC (and petitioning for review) rather than supporting FERC.

We note that FERC states in its April 2, 2026 Notice that it is likely to issue another, substantive, order in response to the request for rehearing.

Respectfully submitted,

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May 29, 2026

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and DC Circuit Rule 26.1, Petitioner the California Independent System Operator Corporation (CAISO) states that it is a nonprofit public benefit corporation organized under the laws of the State of California. The CAISO issues no shares, but from time to time has issued debt securities to the public. It has no affiliates, parent companies, or subsidiaries.

CERTIFICATE OF SERVICE

Pursuant to Rules 15(c) and 25(c) of the Federal Rules of Appellate Procedure, I hereby certify that I have this 29th day of May, 2026, caused to be served copies of the foregoing Petition for Review and Corporate Disclosure Statement by first class mail to:

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

Robert Solomon, Solicitor
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

and by email on all parties on the Commission's service lists for Docket Nos. ER23-2309, ER24-1394, and EL26-34. (Attachment C).

ATTACHMENT A

DCR Transmission, L.L.C., Order Addressing Arguments Raised on Rehearing, Setting Aside Prior Order, Instituting Section 206 Proceeding, and Consolidating Proceedings, Docket Nos. ER23-2309-002, ER24-1394-002, EL26-34-000 (cons.), 194 FERC ¶ 61,085 (Jan. 30, 2026).

194 FERC ¶ 61,085
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

DCR Transmission, L.L.C.

Docket Nos. ER23-2309-002
ER24-1394-002
EL26-34-000
(consolidated)

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING, SETTING ASIDE
PRIOR ORDER, INSTITUTING SECTION 206 PROCEEDING, AND
CONSOLIDATING PROCEEDINGS

(Issued January 30, 2026)

1. On June 20, 2025, acting pursuant to Rule 715(d) of the Commission's Rules of Practice and Procedure,¹ the Commission granted interlocutory appeal confirming that DCR Transmission, L.L.C.'s (DCRT) proposed Transmission Owner Tariff (TO Tariff) and annual Base Transmission Revenue Requirement (TRR) (together, Tariff Records) for the Ten West Link transmission project (Project) are not an initial rate.² DCRT filed a timely request for rehearing of the Interlocutory Appeal Order.

2. Pursuant to *Allegheny Defense Project v. FERC*,³ the rehearing request filed in this proceeding may be deemed denied by operation of law. However, as permitted by section 313(a) of the Federal Power Act (FPA),⁴ we are modifying the discussion in the

¹ 18 C.F.R. § 385.715(d) (2025).

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

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

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

Interlocutory Appeal Order and setting aside the order, as discussed below.⁵ We also institute a proceeding pursuant to section 206 of the FPA,⁶ establish a refund effective date, and consolidate Docket Nos. ER23-2309, ER24-1394, and EL26-34 for purposes of hearing.

I. Background

3. On June 30, 2023, as supplemented on July 3, 2023, and August 18, 2023, pursuant to section 205 of the FPA⁷ and section 35.12 of the Commission's regulations,⁸ DCRT submitted its proposed Tariff Records for the Project in Docket No. ER23-2309-000.

4. On September 29, 2023, the Commission issued an order accepting and suspending DCRT's Tariff Records, to become effective March 8, 2024, subject to refund.⁹ Based on the Commission's preliminary analysis, the Commission concluded that the Tariff Records may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful and raise issues of material fact that could not be resolved based on the record and are more appropriately addressed in hearing and settlement judge procedures.¹⁰ The Commission directed a hearing concerning the justness and reasonableness of DCRT's Tariff Records, "[p]ursuant to the authority contained in and subject to the jurisdiction conferred on the Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly sections 205 and 206 thereof."¹¹ The Commission did not discuss whether the DCRT Tariff Records constitute an initial rate or change of rate. Neither DCRT nor any other party sought rehearing or clarification of the Hearing Order.

5. On March 4, 2024, DCRT submitted identical Tariff Records in Docket No. ER24-1394-000 and requested to change the effective date of its Tariff Records from March 8, 2024 to an indefinite date. On May 2, 2024, the Commission issued an order

⁵ *Allegheny Def. Project*, 964 F.3d at 16-17.

⁶ 16 U.S.C. § 824e.

⁷ *Id.* § 824d.

⁸ 18 C.F.R. § 35.12 (2025).

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

¹⁰ *Id.* P 40.

¹¹ *Id.* at ordering para. (B).

accepting and suspending the resubmitted Tariff Records, subject to refund and the outcome of hearing and settlement judge procedures, and granting DCRT's request to change the effective date.¹² The Commission also consolidated Docket No. ER24-1394-000 with Docket No. ER23-2309-000.¹³ The Commission noted that DCRT's filings "reflect the same rates, terms, and conditions of those the Commission accepted and suspended, subject to refund" in its Hearing Order.¹⁴ Neither DCRT nor any other party sought rehearing or clarification of the Consolidation Order.

6. In the first pre-hearing conference, the Presiding Judge raised the issue of the appropriate statutory designation and assignment of burden of proof for this hearing.¹⁵ The Presiding Judge asked for briefs and scheduled oral argument centering on two questions: (1) whether DCRT's Tariff Records were an initial rate and (2) whether there was any authority to treat an initial rate filing as if it were a rate change filing under FPA section 205(e). Several participants submitted briefs, including DCRT, California Independent System Operator Corporation (CAISO), California Transmission Customers,¹⁶ Electricity Transmission Competition Coalition (ETCC),¹⁷ and Commission Trial Staff (Trial Staff).

7. The Presiding Judge held oral argument on May 21, 2025. At the conclusion of oral argument, the Presiding Judge ruled that: (1) DCRT's Tariff Records were an initial rate and (2) according to FPA section 206, the burden of proof fell on Trial Staff and

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

¹³ *Id.* P 11.

¹⁴ *Id.* P 12.

¹⁵ *DCR Transmission, L.L.C.*, 191 FERC ¶ 63,022, at P 8 (2025) (Order Permitting Interlocutory Appeal).

¹⁶ California Transmission Customers include California Department of Water Resources State Water Project; California Public Utilities Commission; Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California; and Northern California Power Agency.

¹⁷ CAISO, California Transmission Customers, and ETCC are referred to herein, collectively, as Intervenors.

those parties challenging DCRT's Tariff Records.¹⁸ Trial Staff and Intervenors each made oral motions for interlocutory appeal pursuant to Rule 715(b)(1).¹⁹ On May 22, 2025, the Presiding Judge issued the Order Permitting Interlocutory Appeal, in which the Presiding Judge confirmed his bench rulings, granted permission to take an interlocutory appeal, and presented the interlocutory appeal for Commission action pursuant to Rule 715(d).²⁰

II. Interlocutory Appeal Order

8. On June 20, 2025, the Commission granted the interlocutory appeal and clarified that the DCRT Tariff Records should be treated as a change in rate, consistent with the Commission's acceptance and suspension of DCRT's Tariff Records, subject to refund, in the Hearing Order.²¹ The Commission found that "the fact that DCRT's Project had not achieved commercial operation at the time DCRT filed the Tariff Records is not determinative of whether DCRT's Tariff Records constitute an initial or changed rate."²² The Commission explained that "[u]pon the effective date of DCRT's Tariff Records, DCRT began providing a service to customers (that is, transmission customers in CAISO) that had already been receiving the same jurisdictional service (transmission service over the CAISO-controlled transmission system) with costs recovered through the CAISO [Access Charge]."²³ The Commission found that it was appropriate to look at the CAISO Access Charge rather than each participating transmission owner's individual rate to determine whether a new service is being provided to new customers.²⁴ Because CAISO's customers would neither pay a new rate nor receive a new service as a result of

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

¹⁹ *Id.* P 29.

²⁰ *Id.* P 30.

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

²² *Id.* P 29.

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

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

DCRT's Tariff Records becoming effective, the Commission held that the Tariff Records were a change in rate, consistent with Commission precedent.²⁵

III. Rehearing Request

9. DCRT argues that the Commission erred in determining that DCRT's Tariff Records should be treated as a change in rate.²⁶ DCRT alleges that the Commission did not attempt to distinguish this case from *Trans Bay Cable, LLC*,²⁷ which DCRT contends addressed facts nearly identical to those presented here.²⁸ DCRT states that, like in this case, Trans Bay Cable, LLC (Trans Bay) submitted its initial TO Tariff and TRR to become a CAISO transmission owner.²⁹ According to DCRT, the Commission initially accepted and suspended Trans Bay's filing, using essentially the same language as in the DCRT Hearing Order, including the reference to both sections 205 and 206 of the FPA.³⁰ DCRT contends that on rehearing, the Commission characterized Trans Bay's filing as an initial rate, stated that it "wished to clarify it is instituting an FPA section 206 proceeding," instituted a section 206 proceeding in the existing docket, and issued a notice, published in the *Federal Register*, with a refund effective date.³¹ DCRT also argues that Trans Bay had previously filed an operating memorandum between Trans Bay and CAISO setting forth the "rate principles and operational responsibilities" among the various parties in that proceeding.³² DCRT contends that, notwithstanding this previous

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

²⁶ Rehearing Request at 8-20.

²⁷ 129 FERC ¶ 61,225 (2009), *order on reh'g*, 132 FERC ¶ 61,083 (2010).

²⁸ Rehearing Request at 9.

²⁹ *Id.* at 10.

³⁰ *Id.* (citing *Trans Bay*, 129 FERC ¶ 61,225 at PP 1, 25).

³¹ *Id.* at 10-11 (citing *Trans Bay*, 132 FERC ¶ 61,083 at PP 27-28 & n.28; *id.* at ordering paras. (B), (C)).

³² *Id.* at 11 (citing *Trans Bay Cable, LLC*, 112 FERC ¶ 61,095, at PP 1, 3, 23-38 (2005)).

agreement, the Commission still determined that Trans Bay's TO Tariff and TRR were an initial rate.³³

10. DCRT further argues that the Commission erred in determining that its Tariff Records were a change in rates on the basis that DCRT's revenue requirement will be recovered through CAISO's Access Charge.³⁴ DCRT contends that the Commission has historically assessed whether a tariff is a new service for a new customer from the perspective of the filing party.³⁵ DCRT argues that by any plain understanding of its Tariff Records, it is providing a new service for new customers.³⁶ According to DCRT, under the Commission's interpretation in the Interlocutory Appeal Order, no entity selling into an organized market could ever have an initial rate.³⁷ Further, if a transmission owner's TRR is only viewed as an input to CAISO's Access Charge, DCRT contends there would be no need for any transmission owner to file its TRR with the Commission. The TRR could be posted on CAISO's Open Access Same-Time Information System, and CAISO would bear the burden of supporting the incremental increase (or decrease) to the Access Charge.³⁸ DCRT also contends that the filing in *Trans Bay* would have also impacted the Access Charge, but the Commission nonetheless treated it as an initial rate.³⁹ DCRT argues that the Commission erred in determining that the Tariff Records should be a change in rate consistent with "longstanding precedent," as it contends that none of the cases the Commission cited for that proposition actually decided whether the filing was an initial or changed rate.⁴⁰

11. DCRT asserts that the Commission's classification of the Tariff Records as a change in rate results from a misinterpretation of the U.S. Court of Appeals for the

³³ *Id.*

³⁴ *Id.* at 8, 17-20.

³⁵ *Id.* (citing *Trans Bay*, 132 FERC ¶ 61,083; *Fern Solar LLC*, Opinion No. 591, 189 FERC ¶ 61,035 (2024), *order on reh'g*, Opinion No. 591-A, 190 FERC ¶ 61,133 (2025) (*Fern Solar*)).

³⁶ *Id.* at 17.

³⁷ *Id.* at 18.

³⁸ *Id.* at 19.

³⁹ *Id.* at 12.

⁴⁰ *Id.* at 14-15; *see supra* note 25.

District of Columbia Circuit's (D.C. Circuit) decision in *Pacific Gas & Electric Co.*⁴¹ DCRT states that while the "Discussion" section of the Interlocutory Appeal Order did not cite *Pacific Gas & Electric Co.*, the argument summaries section noted that certain parties quoted *Pacific Gas & Electric Co.* as stating that "the TRR of each participating transmission owner can be conceptualized not as its own rate but rather as a cost of the CAISO."⁴² DCRT argues that this phrase is dicta and is taken out of context, as the issue in *Pacific Gas & Electric Co.* was Commission review of the TRR for a non-jurisdictional entity, and the D.C. Circuit went on to note that "FERC does subject the TRRs of jurisdictional participating transmission owners to an independent [section] 205 just and reasonable review."⁴³

12. DCRT also argues that the Commission failed to distinguish this case from *Fern Solar*, where the Commission concluded that the applicant's rates for selling reactive power to PJM constituted an initial rate because "Fern Solar is a new seller that has not previously provided reactive power services to PJM and has no prior transactions and no prior customers."⁴⁴ Further, DCRT argues that the Commission departed without adequate explanation from its holding in *Fern Solar* that "the determination of whether a facility is commercially operational is material for determining whether the rate is categorized as an initial rate or a changed rate."⁴⁵ DCRT contends that the Commission did not provide any reasoning for its conclusion in this case that DCRT not being commercially operational when it filed its Tariff Records is "not determinative" of whether the Tariff Records were an initial or changed rate.⁴⁶

13. DCRT argues that—if the Commission were to set aside the Interlocutory Appeal Order and find the Tariff Records to be an initial rate—the Commission could exercise its authority under section 309 of the FPA⁴⁷ to weigh the equities and set a refund effective

⁴¹ Rehearing Request at 16-17 (citing *Pac. Gas & Elec. Co. v. FERC*, 306 F.3d 1112 (D.C. Cir. 2002)).

⁴² Interlocutory Appeal Order, 191 FERC ¶ 61,212 at P 11 (quoting *Pac. Gas & Elec. Co.*, 306 F.3d at 1116).

⁴³ Rehearing Request at 16-17 (quoting *Pac. Gas & Elec. Co.*, 306 F.3d at 1116).

⁴⁴ *Id.* at 12-14 (citing *Fern Solar*, 190 FERC ¶ 61,133 at P 6).

⁴⁵ *Id.* at 13-14 (citing *Fern Solar*, 190 FERC ¶ 61,133 at P 22) (emphasis in original).

⁴⁶ *Id.*

⁴⁷ 16 U.S.C. § 825h.

date of June 12, 2024.⁴⁸ DCRT contends that there is no deadline for the Commission to establish a section 206 proceeding and refund effective date.⁴⁹ DCRT states the Commission in *Chehalis*, on remand from the D.C. Circuit, determined that an appropriate recoupment remedy under section 309 should put the parties in the position in which they would have been if the Commission had treated *Chehalis*'s filing as an initial rate at the outset and initiated a section 206 proceeding.⁵⁰ DCRT contends that *Chehalis* is instructive in terms of the distinction between an initial and changed rate, the process by which the Commission sets a refund effective date in a section 206 proceeding, and the broad authority the Commission has under section 309 to correct errors and put the parties in the positions they would have been but for the errors.⁵¹

IV. Commission Determination

14. 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. We also institute a proceeding under section 206 of the FPA to investigate whether DCRT's Tariff Records are just and reasonable and not unduly discriminatory or preferential, as discussed further below.

15. As noted in the Interlocutory Appeal Order, the FPA does not define "initial" and "changed" rates, leaving the Commission to draw the line between the two types of rates.⁵² The Commission's long-standing precedent has held that "an initial rate filing is one which provides for [1] a new service [2] to a new customer, and that both the service and the customer must be new."⁵³ 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

⁴⁸ Rehearing Request at 21-23 (citing *Chehalis Power Generating, L.P.*, 171 FERC ¶ 61,188, at P 46, *order on reh'g*, 172 FERC ¶ 61,232 (2020)).

⁴⁹ *Id.* at 21 (citing *Port of Seattle v. FERC*, 499 F.3d 1016, 1031-32 (9th Cir. 2007)).

⁵⁰ *Id.* at 22 (citing *Chehalis*, 171 FERC ¶ 61,188 at PP 44-45, 48, 55).

⁵¹ *Id.* at 23.

⁵² *Tri-State Generation & Transmission Ass'n*, 173 FERC ¶ 61,174, at P 9 (2020) (citing *Fla. Power & Light Co. v. FERC*, 617 F.2d 809, 815 (D.C. Cir. 1980)).

⁵³ *Sw. Elec. Power Co.*, 39 FERC ¶ 61,099, at 61,293 (1987).

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.”⁵⁴

16. In *Trans Bay*, the Commission addressed the filing of a proposed TO Tariff and TRR recoverable through the CAISO Access Charge, both effective at a future date due to the project not yet being in commercial operation.⁵⁵ The Commission initially accepted and suspended Trans Bay’s filing, subject to refund, without addressing whether it constituted an initial or changed rate.⁵⁶ On rehearing, however, the Commission found that “the filing submits an initial rate” and instituted in the same docket a proceeding under FPA section 206 to investigate whether Trans Bay’s proposed rates were just and reasonable.⁵⁷

17. Consistent with *Trans Bay*, we find that DCRT’s Tariff Records are an initial rate.⁵⁸ 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 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.⁵⁹ 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.⁶⁰ Consequently, DCRT could not, as a practical matter, have been offering an existing

⁵⁴ *Id.*; see also *id.* n.5 (noting that “[w]here the utility files a new rate for an existing service to existing customers, this will, of course, continue to be treated as a ‘change in rate’”); *Chehalis Power Generating, L.P.*, 152 FERC ¶ 61,050, at P 14 (2015); *N.Y. State Elec. & Gas Corp.*, 44 FERC ¶ 61,250, at 61,923-24 (1988); *Gulf States Utils. Co.*, 45 FERC ¶ 61,246, at 61,725 (1988); *Pub. Serv. Co. of Colo.*, 74 FERC ¶ 61,354, at 62,087 & n.2 (1996).

⁵⁵ *Trans Bay*, 129 FERC ¶ 61,225 at PP 1-2, 10.

⁵⁶ *Id.* P 1.

⁵⁷ *Trans Bay*, 132 FERC ¶ 61,083 at PP 25, 27.

⁵⁸ *See id.*

⁵⁹ Compare, e.g., *NextEra Energy Transmission W., LLC*, 154 FERC ¶ 61,009 at P 1, with *Valley Link Transmission Md., LLC*, 191 FERC ¶ 61,113, at PP 2, 44 (2025)

⁶⁰ Hearing Order, 184 FERC ¶ 61,199 at P 2; Consolidation Order, 187 FERC ¶ 61,057 at P 4.

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.⁶¹

18. In the Hearing Order, the Commission determined that DCRT's Tariff Records "have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful" and that 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 therein.⁶² In 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.

19. As the ongoing hearing in Docket Nos. ER23-2309-000 and ER24-1394-000 raises common issues of law and fact with the proceeding we are instituting in Docket No. EL26-34-000, we believe that consolidating the proceedings will promote administrative efficiency. Accordingly, we consolidate Docket Nos. ER23-2309, ER24-1394, and EL26-34 for purposes of hearing.

20. In cases where, as here, 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. In such cases, 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 section 206.⁶³ Section 309 of the FPA "affords the Commission broad authority to 'remedy its errors' and correct unjust situations."⁶⁴ In *Chehalis*, the Commission determined that after having erroneously

⁶¹ *Sw. Elec. Power Co.*, 39 FERC at 61,293; *see also Fern Solar*, 190 FERC ¶ 61,133 at P 22 ("Fern was not commercially operational when it submitted its initial FPA section 205 filing and thus could not, as a practical matter, provide any Reactive Service to any customers prior to filing its rate schedule. Given its non-operational status, we continue to find that Fern's FPA section 205 filing is an initial rate.").

⁶² Hearing Order, 184 FERC ¶ 61,199 at P 40.

⁶³ *See, e.g., Idaho Power Co.*, 145 FERC ¶ 61,122 (2013); *Canal Electric Co.*, 46 FERC ¶ 61,153, *order on reh'g*, 47 FERC ¶ 61,275 (1989).

⁶⁴ *TNA Merch. Projects, Inc. v. FERC*, 857 F.3d 354, 359 (D.C. Cir. 2017) (quoting *Xcel Energy Servs. Inc. v. FERC*, 815 F.3d 947, 956 (D.C. Cir. 2016)); *see, e.g., Off. of Consumers' Couns. v. FERC*, 826 F.2d 1136, 1139 (D.C. Cir. 1987) ("[W]hen the Commission has committed legal error in a [Natural Gas Act] section 5 case the proper

accepted and suspended a rate filing, subject to refund, despite having no legal authority to do so, the 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.”⁶⁵ Here, like in *Chehalis*, the Commission erroneously accepted and suspended DCRT’s Tariff Records, and we will use our section 309 authority to remedy this error. DCRT has been on notice that its Tariff Records could be subject to refund since the Commission’s acceptance of the Tariff Records in the Hearing Order and Consolidation Order; DCRT itself has requested that the Commission set June 12, 2024—the effective date of the Tariff Records—as the refund effective date;⁶⁶ and this date provides the maximum protection to consumers. Weighing these equities, we set the refund effective date in these proceedings for June 12, 2024.⁶⁷

21. Section 206(b) of the FPA also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reason why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision. As we are setting the section 206 proceeding in Docket No. EL26-34-000 for hearing, we expect that we would be able to render a decision within eight months of the date of filing of briefs opposing exceptions to the Initial Decision. Thus, if the Presiding Judge were to issue an Initial Decision by June 30, 2026, we expect that we would be able to render a decision by April 30, 2027.

remedy is one that puts the parties in the position they would have been in had the error not been made.”).

⁶⁵ *Chehalis*, 171 FERC ¶ 61,188 at P 44; *see also id.* P 52 (noting that courts have held that “when the Commission makes a legal error, there is a ‘strong equitable presumption in favor of . . . mak[ing] the parties whole’”) (quoting *Exxon Co., U.S.A.*, 182 F.3d at 49).

⁶⁶ Rehearing Request at 23.

⁶⁷ *See Trans Bay*, 132 FERC ¶ 61,083 at P 28 (setting refund effective date for “the date on which the notice of investigation in this proceeding is published in the *Federal Register*, or the date *Trans Bay*’s rates . . . become effective, whichever is later, but in the case of the latter, in no event later than 5 months from the date of the publication of the notice”); *Citizens Sunrise Transmission*, 138 FERC ¶ 61,129 at P 38 (setting refund effective date for “the date on which the Border East Line commences commercial operation, but no later than 5 months from the date of this order.”).

The Commission orders:

(A) In response to DCRT's request for rehearing, the Interlocutory Appeal Order is hereby modified and set aside, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL26-34-000 concerning the justness and reasonableness of DCRT's Tariff Records, as discussed in the body of this order.

(C) Any interested person desiring to be heard in Docket No. EL26-34-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214, within 21 days of the date of issuance of this order. The Commission encourages electronic submission of interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically may file by U.S. mail addressed to Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, or by hand (including courier) delivery to Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

(D) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding under section 206 of the FPA in Docket No. EL26-34-000.

(E) The refund effective date in Docket No. EL26-34-000 established pursuant to sections 206 and 309 of the FPA shall be June 12, 2024.

(F) Docket Nos. ER23-2309, ER24-1394, and EL26-34 are hereby consolidated for purposes of hearing and decision, as discussed in the body of this order.

By the Commission. Commissioner Chang is not participating.

(S E A L)

Debbie-Anne A. Reese,
Secretary.

Document Content(s)

ER23-2309-002.docx.....1

ATTACHMENT B

***DCR Transmission, L.L.C.*, Notice of Denial of Rehearing By Operation of Law and Providing for Further Consideration, Docket Nos. ER23-2309-003, ER24-1394-003, EL26-34-001 (cons.), 195 FERC ¶ 62,006 (April 2, 2026)**

195 FERC ¶ 62,006
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

DCR Transmission, L.L.C.

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

NOTICE OF DENIAL OF REHEARING BY OPERATION OF LAW AND
PROVIDING FOR FURTHER CONSIDERATION

(April 2, 2026)

Rehearing has been timely requested of the Commission's order issued on January 30, 2026, in this proceeding. *DCR Transmission, L.L.C.*, 194 FERC ¶ 61,085 (2026). In the absence of Commission action on a request for rehearing within 30 days from the date it is filed, the request for rehearing may be deemed to have been denied. 16 U.S.C. § 825l(a); 18 C.F.R. § 385.713 (2025); *Allegheny Def. Project v. FERC*, 964 F.3d 1 (D.C. Cir. 2020) (en banc).

As provided in 16 U.S.C. § 825l(a), the requests for rehearing of the above-cited order filed in this proceeding will be addressed in a future order to be issued consistent with the requirements of such section. As also provided in 16 U.S.C. § 825l(a), the Commission may modify or set aside its above-cited order, in whole or in part, in such manner as it shall deem proper.

Debbie-Anne A. Reese,
Secretary.

Document Content(s)

ER23-2309-003.docx.....1

ATTACHMENT C**SERVICE LIST****Parties In the Underlying Administrative Proceedings**

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