

193 FERC ¶ 61,022
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

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

Docket No. EL24-92-002

v.

California Independent System Operator Corporation

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued October 16, 2025)

1. On June 27, 2024, the Commission issued an order denying a complaint filed by Cometa Energia, S.A. de C.V. (Saavi)¹ against the California Independent System Operator Corporation (CAISO) alleging that CAISO unlawfully terminated the deliverability status of Saavi's 181.5 megawatt (MW) combustion turbine generating unit (Unit C).² On April 29, 2025, the Commission issued an order addressing arguments raised on rehearing, and setting aside, in part, the Complaint Order.³ On May 29, 2025, Saavi timely filed a request for rehearing of the First Rehearing Order.

2. Pursuant to *Allegheny Defense Project v. FERC*,⁴ 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),⁵ we are modifying the discussion in the

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

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

³ *Cometa Energia, S.A. de C.V. v. Cal. Indep. Sys. Operator Corp.*, 191 FERC ¶ 61,089 (2025) (First Rehearing Order).

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

⁵ 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,

First Rehearing Order and continue to reach the same result in this proceeding, as discussed below.⁶

I. Background

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

3. Saavi operates Unit C, which is located in Mexico but has interconnection rights to the CAISO-controlled transmission grid.⁷ CAISO granted Unit C “Full Capacity Deliverability Status,” which represents that the grid can deliver a generating unit’s full capacity under peak load conditions due to sufficient delivery network upgrades.⁸ This status enables a generating unit to count toward load serving entities’ resource adequacy obligations in an amount termed “Net Qualifying Capacity.”⁹ A generating unit’s Net Qualifying Capacity is its “Qualifying Capacity”—the maximum resource adequacy capacity it can provide—reduced by factors such as performance criteria.¹⁰ CAISO produces an annual report of Net Qualifying Capacity values for each resource adequacy compliance year.¹¹ CAISO Open Access Transmission Tariff (Tariff) section 40.4.4 states that a generating unit “can have its Qualifying Capacity reduced, for . . . the Net Qualifying Capacity annual report . . . for the next Resource Adequacy Compliance Year, if a CAISO testing program determines that it is not capable of supplying the full Qualifying Capacity amount.”¹²

in whole or in part, any finding or order made or issued by it under the provisions of this chapter.”).

⁶ *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the First Rehearing Order. See *Smith Lake Improvement & Stakeholders Ass’n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

⁷ March 20, 2024 Complaint at 1, 5-6 (Complaint).

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

⁹ CAISO, CAISO eTariff, app. A (Definitions), Net Qualifying Capacity (0.0.0).

¹⁰ *Id.*; *id.* Qualifying Capacity (1.0.0).

¹¹ CAISO, CAISO eTariff, § 40.4.2 (Net Qualifying Capacity Report) (0.0.0).

¹² *Id.* § 40.4.4 (Reductions for Testing) (4.0.0).

4. Unit C has a participating generator agreement (PGA) with CAISO, which allows it to dispatch in CAISO or via Mexico's Comisión Federal de Electricidad (CFE).¹³ Starting in 2017, Unit C disconnected from CAISO and then connected to CFE for over three consecutive years.¹⁴ Unit C remains disconnected from CAISO.¹⁵

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

B. Saavi Complaint

6. Saavi filed a complaint against CAISO on March 20, 2024, alleging that CAISO unlawfully terminated Unit C's deliverability status.¹⁹ Saavi alleged, as relevant here, that for CAISO to terminate Unit C's deliverability status, the rule of reason requires that the provision for doing so be in the Tariff.²⁰ The rule of reason provides that tariffs must include practices that "affect rates and service significantly," "are realistically susceptible of specification," and "are not so generally understood in any contractual arrangement as to render recitation superfluous."²¹ Saavi argued that CAISO's practice for terminating deliverability status satisfies these criteria and thus must be included in the Tariff.²²

¹³ Complaint Order, 187 FERC ¶ 61,193 at P 2; *see also* Complaint, Ex. A (PGA).

¹⁴ Complaint Order, 187 FERC ¶ 61,193 at PP 3, 5.

¹⁵ Complaint at 10; *see also id.* Ex. B at 4.

¹⁶ *Id.* Ex. E at 1.

¹⁷ CAISO, BPM for Reliability Requirements (July 29, 2025) § 6.1.3.4, <https://bpmcm.caiso.com/Pages/BPMDetails.aspx?BPM=Reliability%20Requirements>.

¹⁸ Complaint Order, 187 FERC ¶ 61,193 at P 5.

¹⁹ Complaint at 1.

²⁰ *Id.* at 2.

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

²² Complaint at 15-16.

Saavi requested that the Commission direct CAISO to reinstate Unit C's deliverability status.²³ Saavi alleged that it intends to transfer that reinstated status to a planned battery electric storage system (BESS) that will achieve commercial operation in the third quarter of 2027.²⁴

7. CAISO answered, as relevant here, that Saavi's requested relief would have negative consequences. CAISO provided a declaration by Robert Sparks, Senior Manager for Regional Transmission – South.²⁵ Mr. Sparks stated that if CAISO were to reinstate Unit C's deliverability status, "then approximately 40 generating units behind [a constraint] would be impacted by [Net Qualifying Capacity] MW reductions" and "[t]he total curtailment would be the equivalent of the 181 MW added by Unit C."²⁶ The Net Qualifying Capacity reductions would thus reduce the amount of resource adequacy capacity those units could provide.²⁷ CAISO stated that "[s]tranded or unavailable deliverability would result in load-serving entities being unable to meet their [resource adequacy] obligations—jeopardizing reliability."²⁸

C. Complaint Order

8. On June 27, 2024, the Commission denied the complaint.²⁹ As relevant here, the Commission stated that it was unpersuaded by Saavi's arguments on the rule of reason.³⁰ The Commission explained that even significant and specifiable practices need not be in a tariff when they are clearly implied by the tariff's express terms.³¹ The Commission found that the Tariff "clearly implied" the BPM provision.³² Specifically, the

²³ *Id.* at 19.

²⁴ *Id.* at 7-8, 12.

²⁵ CAISO April 9, 2024 Answer, Declaration PP 1-2.

²⁶ *Id.* P 13.

²⁷ *Id.* P 9; *see also* CAISO, CAISO eTariff, app. A (Definitions), Net Qualifying Capacity (0.0.0); *id.* Qualifying Capacity (1.0.0).

²⁸ CAISO April 9, 2024 Answer at 5.

²⁹ Complaint Order, 187 FERC ¶ 61,193 at P 42.

³⁰ *Id.* P 48.

³¹ *Id.*

³² *Id.*

Commission cited Tariff section 40.4.4 and stated that “the Tariff thus enshrines the principle that a generating resource must meet certain requirements and undergo annual testing to retain its net qualifying capacity (i.e., remain capable of operating at its rated deliverability level for the purpose of retaining deliverability).”³³

D. First Rehearing Order

9. On April 29, 2025, the Commission issued the First Rehearing Order, addressing arguments raised on rehearing of the Complaint Order.³⁴ The Commission set aside the Complaint Order’s rule of reason finding but sustained the denial of Saavi’s requested remedy to reinstate Unit C’s deliverability status.³⁵

1. Rule of Reason

10. The Commission found, upon further consideration, that for CAISO to apply the BPM provision to terminate deliverability status, the rule of reason requires that such a practice be in the Tariff.³⁶ Specifically, the Commission found that the BPM provision significantly affects rates, is realistically susceptible of specification, and is not so generally understood in any contractual arrangement as to render recitation superfluous.³⁷ The Commission also found that the BPM provision is not “clearly implied” by the existing Tariff.³⁸ The Commission explained that, although “Tariff section 40.4.4 and the provision in BPM section 6.1.3.4 address related concepts, . . . the Tariff does not clearly imply the BPM provision.”³⁹ The Commission thus set aside the Complaint Order’s rule of reason determination.⁴⁰

³³ *Id.*

³⁴ First Rehearing Order, 191 FERC ¶ 61,089 at P 1.

³⁵ *Id.* P 18.

³⁶ *Id.*

³⁷ *Id.* PP 19-20.

³⁸ *Id.* PP 21-22.

³⁹ *Id.*

⁴⁰ *Id.* at 19-22.

2. Remedy

11. The Commission sustained the Complaint Order’s denial of Saavi’s requested remedy to reinstate Unit C’s deliverability status.⁴¹ The Commission explained that under FPA section 309, the Commission may order remedies when it finds them “necessary or appropriate to carry out the [FPA].”⁴² The Commission further noted that courts have long held that the Commission’s “discretion is often at its zenith when the challenged action relates to the fashioning of remedies.”⁴³ On rehearing of the Complaint Order, Saavi had requested that the Commission either direct status reinstatement or “order alternative relief,” but in the First Rehearing Order, the Commission rejected that request for “alternative relief” because Saavi had not raised it previously or with sufficient specificity.⁴⁴ The Commission then proceeded to consider the relevant equities related to deliverability status reinstatement.⁴⁵

12. The Commission found that several considerations weighed against granting Saavi’s requested remedy.⁴⁶ First, the Commission found that reinstating Unit C’s deliverability status could negatively affect reliability.⁴⁷ The Commission stated that CAISO provided a declaration explaining that if CAISO were to reinstate Unit C’s deliverability status, many generating units behind a deliverability constraint would be impacted by Net Qualifying Capacity reductions equivalent to the 181 MW added by Unit C.⁴⁸ These reductions, the Commission explained, would thus lessen the amount of resource adequacy capacity those units could provide to load-serving entities and their customers.⁴⁹ The Commission noted that CAISO stated that this circumstance “would

⁴¹ *Id.* PP 18, 31.

⁴² *Id.* P 23 (quoting 16 U.S.C. § 825h) (citing *Towns of Concord, Norwood, & Wellesley v. FERC*, 955 F.2d 67, 72-73, 76 (D.C. Cir. 1992)).

⁴³ *Id.* (internal quotation marks omitted).

⁴⁴ *Id.* n.77.

⁴⁵ *Id.* PP 23-31 (citing, e.g., *XO Energy MA, LP v. FERC*, 77 F.4th 710, 716 (D.C. Cir. 2023)).

⁴⁶ *Id.* P 24.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

result in load-serving entities being unable to meet their [resource adequacy] obligations—jeopardizing reliability.”⁵⁰

13. The Commission was unpersuaded by Saavi’s arguments regarding the impact of granting its requested remedy.⁵¹ For instance, the Commission found that while Saavi speculated that CAISO could provide “interim” allocations to the generating units “that would lose a small portion of their deliverability as a result of an equitable claw back,” Saavi had provided no citation or explanation for how such interim allocations would be conducted under the Tariff.⁵² The Commission also found that Saavi did not support the notion that any such “interim deliverability” would even be available or, if it were, that it would prevent Net Qualifying Capacity reductions for other generating units.⁵³ Further, the Commission found that if CAISO reinstated Unit C’s deliverability status, it appeared that Unit C would not use that status to provide resource adequacy.⁵⁴ Instead, the Commission noted, Saavi stated that it intends to transfer the status to its planned BESS, which will not achieve commercial operation until the third quarter of 2027.⁵⁵

14. Second, the Commission found that Saavi’s proposed remedy would harm the generating units that would face Net Qualifying Capacity reductions.⁵⁶ The Commission explained that these generating units are blameless, bona fide recipients of deliverability status, and they have made significant investment decisions in pursuit of, and reliance on, their highly valuable deliverability status.⁵⁷

⁵⁰ *Id.* (quoting CAISO April 9, 2024 Answer at 5).

⁵¹ *Id.* P 25.

⁵² *Id.* (internal quotation marks omitted).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* The Commission further found that even if Saavi intends to use deliverability status for Unit C, that use would still cause additional other harms such as third-party resources facing Net Qualifying Capacity reductions, increasing regulatory uncertainty, and the effects of Saavi’s prejudicial delay. *Id.* n.90.

⁵⁶ *Id.* P 26.

⁵⁷ *Id.*

15. Third, the Commission found that Saavi's proposed remedy could increase regulatory uncertainty.⁵⁸ The Commission stated that investors may be less likely to invest capital if deliverability status allocations faced this type of future change.⁵⁹

16. Finally, the Commission found that even though Saavi learned of the revocation in October 2022, Saavi had not provided a justification for delaying until March 20, 2024 to file the Complaint.⁶⁰ The Commission noted that Saavi had acknowledged that reinstating Unit C's status "could inflict . . . prejudice on other generating units receiving allocations that may have to be clawed back, as they may take further actions (e.g., executing power purchase agreements) relying on their current deliverability awards."⁶¹

17. The Commission also addressed two additional considerations Saavi raised in favor of its requested remedy.⁶² First, in response to Saavi's argument that it was incorrectly deprived of its legitimately earned and valuable deliverability status, the Commission noted that Saavi had not indicated it intends to in fact use that deliverability status for Unit C and that Saavi stated it aims to transfer the status to the BESS under development.⁶³ Second, the Commission rejected as unfounded Saavi's argument that certain letters from CAISO implied Unit C retained status after the revocation occurred.⁶⁴

18. In considering and weighing the equities, the Commission found that—on balance—the most reasonable decision was to decline to grant Saavi's requested remedy of status reinstatement.⁶⁵ The Commission found that, as a general matter, the considerations that favored denying the remedy outweighed those that did not.⁶⁶ The Commission particularly emphasized that, if it were to grant the remedy, it appeared that

⁵⁸ *Id.* P 27.

⁵⁹ *Id.*

⁶⁰ *Id.* P 28.

⁶¹ *Id.* (quoting Saavi May 21, 2024 Answer at 8-9).

⁶² *Id.* P 29.

⁶³ *Id.* (citing Complaint at 7-8, 12).

⁶⁴ *Id.* P 30.

⁶⁵ *Id.* P 31.

⁶⁶ *Id.*

Saavi would not use the deliverability status until at least 2027, while there would be negative effects on reliability and for other generating units.⁶⁷

II. Rehearing Request

A. Scope of Requested Relief

19. Saavi argues on rehearing that the Commission erroneously failed to consider relief beyond deliverability status reinstatement.⁶⁸ Saavi contends that it had properly raised its request for alternative relief before rehearing.⁶⁹ Saavi requests “alternative arrangements for a fair and equitable outcome” “or some other form of relief to avoid giving legal effect to CAISO’s unlawful action.”⁷⁰ Saavi states that it “referred to such alternative relief in its Complaint.”⁷¹ Saavi also asserts that because “the Commission has broad discretion in providing *sua sponte* relief and has previously granted relief that parties have not expressly requested in their respective prayers for relief,” the Commission should do so here.⁷²

B. Remedial Discretion and the Filed Rate Doctrine

20. Saavi argues that the Commission lacks authority to decline, on equitable grounds, to grant the requested remedy.⁷³ Specifically, Saavi contends that the filed rate doctrine, which “compels the Commission to strict[ly] adhere[] to the filed rate . . . despite its harsh consequences in some cases,” “presents a structural limitation on the exercise of the Commission’s powers.”⁷⁴ Saavi thus argues that the Commission’s decision to decline to grant Saavi’s requested remedy was an impermissible violation of the filed rate doctrine.⁷⁵ Saavi maintains that the Commission “has no discretion to waive the

⁶⁷ *Id.*

⁶⁸ Rehearing Request at 2, 8-10, 18-20.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 19-20.

⁷³ *Id.* at 1-2, 4-5, 9-10, 12-15.

⁷⁴ *Id.* at 12 (internal quotation marks omitted).

⁷⁵ *Id.*

operation of a filed rate or to retroactively change or adjust a rate for good cause or for any other equitable considerations.”⁷⁶ Saavi argues that the Commission’s remedial discretion is not absolute, while the filed rate doctrine “is absolute when it applies.”⁷⁷ Saavi states that “equitable considerations” do not factor into the filed rate doctrine analysis.⁷⁸ Saavi also argues that to the extent the Commission has discretion to deny a remedy for a violation of the filed rate doctrine, that discretion extends only to a decision on whether to grant or deny refunds.⁷⁹

C. Remedy

21. Saavi argues that, even assuming the filed rate doctrine does not require deliverability status reinstatement, the Commission improperly weighed the relevant equities.⁸⁰

22. Saavi contends that Commission erred in its discussion of reliability.⁸¹ The Commission, Saavi argues, relied on unsupported conclusions in the CAISO declaration.⁸² As to the other generating units, Saavi asserts that CAISO did not identify any units that would face Net Qualifying Capacity reductions.⁸³ Saavi similarly argues that CAISO did not provide evidence these units are providing resource adequacy capacity.⁸⁴ Saavi also claims that the logic in the CAISO declaration “assumed” the validity of the BPM provision.⁸⁵ Saavi further argues that Unit C is “capable of

⁷⁶ *Id.* (quoting *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 826 (D.C. Cir. 2021)).

⁷⁷ *Id.* at 14.

⁷⁸ *Id.* at 14-15.

⁷⁹ *Id.* at 14 n.53.

⁸⁰ *Id.* at 15-16.

⁸¹ *Id.* at 16.

⁸² *Id.*

⁸³ *Id.* at 6.

⁸⁴ *Id.*

⁸⁵ *Id.* at 6-7.

providing resource adequacy but for [its revoked deliverability status].”⁸⁶ Saavi asserts that, if Unit C’s deliverability status were reinstated and Unit C did not use that status, then CAISO could allocate “interim deliverability” to generating units that would otherwise face Net Qualifying Capacity reductions.⁸⁷ Saavi argues that the Commission erred in rejecting this argument on the ground that Saavi did not explain how the proposal would function under the Tariff.⁸⁸

23. On the potential harm to other generating units, Saavi argues that the Commission had no basis for the finding that these generating units had made significant investment decisions in pursuit of, and reliance on, valuable deliverability status.⁸⁹

24. On the issue of delay, Saavi argues the Commission erred in finding Saavi had not properly justified a prejudicial delay in filing the Complaint.⁹⁰ Saavi maintains that it delayed filing the Complaint until March 20, 2024, in order to accommodate negotiations with CAISO.⁹¹ Saavi further argues that these negotiations are in accordance with the Commission’s policy of favoring settlements.⁹²

25. On harm faced by Saavi, Saavi argues that the Commission improperly “sustains damage against the only aggrieved party,” Saavi.⁹³ Saavi states it may transfer the status to the BESS it is developing, which will not achieve commercial operation until the third quarter of 2027.⁹⁴ In addition, Saavi argues that the Commission should consider the equitable principle of “regard[ing] as being done that which should have been done.”⁹⁵

⁸⁶ *Id.* at 16.

⁸⁷ *Id.* at 7, 16.

⁸⁸ *Id.* at 7 (citing First Rehearing Order, 191 FERC ¶ 61,089 at P 25).

⁸⁹ *Id.* at 6.

⁹⁰ *Id.* at 17-18.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* at 9-10.

⁹⁴ *Id.* at 7.

⁹⁵ *Id.* at 14 (internal quotation marks omitted).

26. Last, Saavi argues that denying the remedy would not “advance the policies” and purposes of the FPA because CAISO violated the filed rate doctrine.⁹⁶ First, Saavi argues that denying a remedy would not comport with the principle of “predictability.”⁹⁷ Second, Saavi raises “confidence in . . . market rules that the [filed rate] doctrine protects.”⁹⁸ Third, Saavi contends that denying a remedy “would disrupt the aims of the filed rate doctrine by . . . undermining fairness to parties relying on . . . the filed rate.”⁹⁹ Finally, Saavi asserts that “those trusted to administer tariffs across broad swaths of American geography would be unaccountable to the most obvious and just consequences of failing to follow their tariffs.”¹⁰⁰

III. Discussion

27. We continue to sustain the Complaint Order’s denial of Saavi’s requested remedy of deliverability status reinstatement.¹⁰¹

A. Scope of Requested Relief

28. Saavi argues that the Commission erroneously failed to consider relief beyond deliverability status reinstatement.¹⁰² We disagree. As the Commission explained in the First Rehearing Order, Saavi impermissibly raised its request for alternative relief for the first time on rehearing.¹⁰³ The request for alternative relief is accordingly not properly before the Commission, and we continue to reject it.¹⁰⁴ Without citation, Saavi asserts

⁹⁶ *Id.* at 4-5, 9-11.

⁹⁷ *Id.* at 13-15.

⁹⁸ *Id.* at 13.

⁹⁹ *Id.* at 15 (internal quotation marks omitted).

¹⁰⁰ *Id.*

¹⁰¹ First Rehearing Order, 191 FERC ¶ 61,089 at P 18.

¹⁰² Rehearing Request at 8-9, 18-20.

¹⁰³ First Rehearing Order, 191 FERC ¶ 61,089 at P 23 n.77.

¹⁰⁴ *NextEra Energy Seabrook, LLC v. NECEC Transmission LLC*, 183 FERC ¶ 61,196, at P 39 (2023); *see also Ill. Power Co.*, 73 FERC ¶ 61,348, at 62,058 (1995); *Transmission Agency of N. Cal. v. Pac. Gas & Elec. Co.*, 85 FERC ¶ 61,320, at 62,257 (1998) (rejecting attempt, on rehearing, to seek an alternative form of relief from that originally sought in complaint). The Commission looks with disfavor on parties raising

that it “referred to such alternative relief in its Complaint.”¹⁰⁵ But the “Relief Requested” section of its Complaint states only that “the Commission should direct CAISO to promptly reinstate Unit C’s deliverability status and direct CAISO to initiate discussions [on reinstatement].”¹⁰⁶ No portion of the Complaint requests that the Commission grant alternative relief. Saavi also notes that in a subsequent pleading, Saavi stated that “CAISO has failed to propose any alternative arrangement that could result in a just and reasonable result for all.”¹⁰⁷ Yet it was Saavi’s obligation as the complainant, not CAISO’s, to raise in the Complaint any alternative arrangement and state the basis for that relief.¹⁰⁸ Finally, Saavi cites “efforts Saavi undertook in its correspondence with CAISO to reach a fair and reasonable compromise,”¹⁰⁹ but those efforts are not a request to the Commission for relief nor a sufficient explanation of such a request.

arguments for the first time on rehearing that could have been raised earlier because other parties are not permitted to respond to requests for rehearing and it disrupts the administrative process by moving the target for parties seeking a final decision. *NextEra Energy Seabrook, LLC*, 183 FERC ¶ 61,196 at P 39.

¹⁰⁵ Rehearing Request at 19.

¹⁰⁶ Complaint at 19. To be clear, ordering discussions with CAISO to effectuate status reinstatement would not be a separate remedy from status reinstatement but rather part of that relief.

¹⁰⁷ Rehearing Request at 19 (quoting Saavi April 24, 2024 Answer at 10).

¹⁰⁸ See *Columbia Gulf Transmission, LLC v. FERC*, 106 F.4th 1220, 1230-31 (D.C. Cir. 2024) (approving the Commission’s dismissal of certain arguments “due to pleading deficiencies” because the complaint violated Commission “regulations requir[ing] an administrative complaint to ‘[c]learly identify the action or inaction which is alleged to violate applicable . . . requirements’ and ‘[e]xplain how the action or inaction [does so,]’ 18 C.F.R. § 385.206(b),” and also explaining that “[e]ven though” these arguments were raised “at the rehearing stage, [the Commission] reasonably concluded that those discussions came too late”). Indeed, Rule 206(b) of the Commission’s Rules of Practice and Procedure requires that complainants “[s]tate the specific relief or remedy requested . . . and the basis for that relief.” 18 C.F.R. § 385.206(b)(7) (2025).

¹⁰⁹ Rehearing Request at 8 & n.28.

29. Similarly, the Commission also rejected the request for alternative relief—and we continue to do so here—because Saavi provided no information with which the Commission could evaluate such a request or craft such relief.¹¹⁰ On rehearing, Saavi vaguely raises “the prospect of alternative arrangements for a fair and equitable outcome” “or some other form of relief to avoid giving legal effect to CAISO’s unlawful action.”¹¹¹ Saavi does not explain what this “other form of relief” would entail. Thus, Saavi again fails to advance its arguments with the requisite specificity.¹¹²

30. Saavi also suggests that the Commission should grant it relief “*sua sponte*.”¹¹³ The very meaning of *sua sponte*—“[w]ithout prompting”¹¹⁴—reveals this argument’s critical flaw: Saavi failed to properly request alternative relief.¹¹⁵

B. Remedial Discretion and the Filed Rate Doctrine

31. Saavi contends on rehearing that the filed rate doctrine, which “compels the Commission to strict[ly] adhere[] to the filed rate,” requires the Commission to order deliverability status reinstatement.¹¹⁶ Saavi asserts that the Commission owes it a remedy because CAISO violated the filed rate.¹¹⁷ But Saavi misunderstands the

¹¹⁰ First Rehearing Order, 191 FERC ¶ 61,089 at P 23 n.77 (citing First Rehearing Request at 6, 18). Consistent with FPA section 313(a), 16 U.S.C. § 825l(a), the Commission’s practice, with which courts have agreed, is to reject issues raised on rehearing without sufficient specificity. *E.g.*, *ZEP Grand Prairie Wind, LLC*, 183 FERC ¶ 61,150, at P 10 (2023); *Ind. Util. Regul. Comm’n v. FERC*, 668 F.3d 735, 736 (D.C. Cir. 2012).

¹¹¹ Rehearing Request at 8-9, 18-20.

¹¹² *ZEP Grand Prairie Wind, LLC*, 183 FERC ¶ 61,150 at P 10.

¹¹³ Rehearing Request at 19-20.

¹¹⁴ *Sua Sponte*, Black’s Law Dictionary (12th ed. 2024) (“Latin ‘of one’s own accord; voluntarily’ . . . Without prompting or suggestion; on its own motion”).

¹¹⁵ *NextEra Energy Seabrook, LLC*, 183 FERC ¶ 61,196 at P 39. In any event, we decline to grant such relief due to the lack of a record to support it, as discussed herein.

¹¹⁶ Rehearing Request at 1-2, 4-5, 9-10, 12-15 (internal quotation marks omitted).

¹¹⁷ *Id.*

relationship between violations and remedies.¹¹⁸ That is, Saavi believes that if there was a Tariff violation, Saavi is automatically entitled to a remedy. That does not follow. Courts have specifically rejected the proposed application of “*ubi jus, ibi remedium*—for every right, a remedy”—if a “utility [were] to violate the filed rate doctrine.”¹¹⁹ The D.C. Circuit described as “incorrect[]” the notion of an “absolute requirement of action on the part of FERC” “in the face of an undoubted statutory violation.”¹²⁰ Recently, that court put it more simply: “the Commission has the authority, but not the obligation, to provide a remedy for a statutory violation.”¹²¹ And for good reason—the text of FPA section 309 expressly grants the Commission the power to order remedies “it may find” necessary or appropriate to carrying out the FPA.¹²²

¹¹⁸ *Polanco v. Diaz*, 76 F.4th 918, 933 (9th Cir. 2023) (criticizing an argument that “conflates the existence of a . . . right with the availability of a remedy for a violation of that right”).

¹¹⁹ *Towns of Concord*, 955 F.2d at 73.

¹²⁰ *Consol. Edison Co. of N.Y., Inc. v. FERC*, 510 F.3d 333, 339 (D.C. Cir. 2007).

¹²¹ *XO Energy*, 77 F.4th at 716. In exercising this discretion here, the Commission made no finding that Saavi lacked entitlement to *any* relief; rather, the Commission simply declined to grant the remedy Saavi requested in its Complaint—CAISO’s specific performance.

¹²² 16 U.S.C. § 825h. Saavi concedes that discretion to deny relief extends at least to refunds because FPA section 205(e) “expressly,” Rehearing Request at 14 n.53, states that the Commission “may” order refunds in certain circumstances, 16 U.S.C. § 824d(e). Yet Saavi ignores the fact that FPA section 309 not only gives the Commission the “power” to act, it too expressly states that the Commission has that power as the Commission “may” find exercising it necessary or appropriate to carrying out the FPA. 16 U.S.C. § 825h. Saavi separately claims that “Saavi never sought FPA [s]ection 309 relief.” Rehearing Request at 19. However, Saavi’s Complaint begins: “Pursuant to sections 206, 306, and 309 of the Federal Power Act . . . Saavi . . . files this Complaint.” Complaint at 1.

32. Saavi overlooks the Commission’s “broad equitable discretion in determining whether and how to apply remedies.”¹²³ Courts have repeatedly affirmed that, “[i]n fashioning remedies, the Commission’s discretion is at its zenith.”¹²⁴ Saavi’s position cannot be reconciled with that broad authority because, if every violation necessitated a remedy, then the Commission would have no discretion to issue an order “granting *or denying*” relief.¹²⁵ Although denying relief may be less common than granting relief, it can be a reasonable decision when the equities weigh against granting relief.

33. Saavi argues that denying it a remedy contravenes the filed rate doctrine.¹²⁶ But Saavi fails to show that filed rate doctrine violations fall outside the Commission’s discretion to deny remedies. To the contrary, it has long been clear that “the Commission has discretion in determining the appropriate remedy, *if any*, for violations of the filed rate doctrine.”¹²⁷ As the D.C. Circuit recently explained, the Commission has “the authority, *but not the obligation*, to provide a remedy for . . . a filed-rate violation.”¹²⁸ To be clear, we acknowledge that the Commission cannot grant a remedy under FPA

¹²³ *Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,136, at P 45 (2014).

¹²⁴ *XO Energy*, 77 F.4th at 716 (internal quotation marks omitted) (“The Commission has broad discretion to determine remedies for violations of the statutes it administers.”).

¹²⁵ *Towns of Concord*, 955 F.2d at 76 (emphasis added).

¹²⁶ Rehearing Request at 13.

¹²⁷ *Keyspan-Ravenswood, LLC v. N.Y. Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,062, at P 47 (2008) (citing *Towns of Concord*, 955 F.2d at 75-76) (emphasis added); *see also Am. Mun. Power v. PJM Interconnection, L.L.C.*, 191 FERC ¶ 61,001, at PP 58-64 & n.145 (2025) (“The Commission has broad remedial discretion to determine whether remedies are appropriate for a filed rate violation.”).

¹²⁸ *XO Energy*, 77 F.4th at 716 (emphasis added); *see also Towns of Concord*, 955 F.2d at 72 (“As to the existence of remedial discretion, our examination of the Federal Power Act reveals no statutory command mandating refunds *when the rate charged exceeds that filed*.”) (emphasis added); *Borough of Ellwood City v. FERC*, 583 F.2d 642, 648 (3d Cir. 1978) (explaining that “it was within the Commission’s discretion” to decline relief because: “Since the companies were not culpable, they should not be punished for technical non-compliance. Excusing past failures is also an incentive to present compliance. Finally, considerations of administrative practicality preclude requiring the Commission to search decades into the past in order to enforce every failure to comply with the regulatory scheme.”).

section 309 if *implementing* that remedy would itself violate the filed rate.¹²⁹ That rule, however, does not bar the Commission from declining to grant a remedy after finding the filed rate has already been violated. Doing so, the D.C. Circuit has held, is permissible and does not “equal[] the Commission[] authorizing the utility to violate the filed rate doctrine.”¹³⁰ In fact, the rule that remedies may not violate the filed rate doctrine demonstrates that not all violations of the filed rate doctrine receive remedies.¹³¹

¹²⁹ *Okla. Gas & Elec. Co.*, 11 F.4th at 829-32.

¹³⁰ *Towns of Concord*, 955 F.2d at 73. This statement from *Towns of Concord* also rebuts Saavi’s suggestion that equities play no part once a filed rate doctrine violation is determined. Rehearing Request at 5. The D.C. Circuit has stated that the Commission has “no discretion to waive the operation of a filed rate” based on “equitable considerations.” *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1230 (D.C. Cir. 2018). The fact that the Commission cannot invoke equities to waive the operation of the filed rate does not mean that the equities must be ignored in evaluating a remedy for a filed rate violation that has already occurred. Denying a remedy does not negate the existence of a violation.

¹³¹ *E.g.*, *Okla. Gas & Elec. Co.*, 11 F.4th at 829-33 (holding that even though a transmission provider “failed to comply with” a tariff provision, the Commission could not undo this violation by requiring a different violation of the filed rate); *see also EDF Renewables, Inc. v. FERC*, 117 F.4th 1003, 1008 (8th Cir. 2024). We reiterate the finding that Saavi provided no citation or explanation for how its requested remedy could be conducted under the Tariff. First Rehearing Order, 191 FERC ¶ 61,089 at P 25. Saavi also cites various cases describing the conduct that constitutes a violation of the filed rate doctrine. Rehearing Request at 1-2, 4-6, 9-10, 12-15 (citing, *e.g.*, *PJM Power Providers Grp. v. FERC*, 96 F.4th 390, 401-02 (3d Cir. 2024); *EDF Renewables*, 117 F.4th at 1008; *Okla. Gas*, 11 F.4th at 829-32; *Old Dominion Elec.*, 892 F.3d at 1231; *Sw. Power Pool, Inc.*, 166 FERC ¶ 61,160, at P 55 (2019)). None of those cases, however, remove the Commission’s statutorily granted discretion over remedies for such violations, beyond recognizing that (as noted) the Commission cannot grant a remedy under FPA section 309 if implementing that remedy would itself violate the filed rate. In *Southwest Power Pool, Inc.*, 166 FERC ¶ 61,160, the Commission rejected a request to waive a tariff provision that limited the time period for billing adjustments because that waiver would violate the filed rate doctrine and explained that, therefore, “equitable considerations do not bear on our determination.” *Id.* P 55. The Commission explained that “having determined that the filed rate doctrine . . . preclude[s] [the] waiver request, exercising our authority under FPA section 309 in this instance would be inappropriate.” *Id.* P 57.

34. Saavi criticizes the Commission’s reliance on the D.C. Circuit’s decisions in *XO Energy* and *Towns of Concord* and argues the cases are distinguishable because they relate to refunds.¹³² Both cases, however, reaffirmed the Commission’s discretion to deny a remedy and did not confine such discretion to refunds. In *XO Energy*, the court held that “the Commission has the authority, but not the obligation, to provide a remedy for a statutory violation, including a filed-rate violation.”¹³³ The court did not limit its holding to refunds. And in *Towns of Concord*, the court held that the Commission’s discretion to deny refunds stemmed from its “power” under FPA section 309 to “perform any and all such acts . . . as it may find necessary or appropriate to carry out [the FPA].”¹³⁴ That section is not limited to refunds.¹³⁵ Commission precedent also confirms that discretion to deny relief extends beyond refunds.¹³⁶

C. Remedy

35. In deciding whether to exercise our discretion to grant a remedy, the Commission balances the relevant competing equities.¹³⁷ In approaching this “difficult problem,” “the Commission must show that it considered relevant factors and struck a reasonable accommodation among them, and that its order granting or denying [a remedy] was equitable in the circumstances.”¹³⁸ In the First Rehearing Order, the Commission analyzed several considerations and then found that, on balance, the most reasonable decision is to decline to grant Saavi’s requested remedy.¹³⁹ We proceed through each

¹³² Rehearing Request at 14 n.53.

¹³³ *XO Energy*, 77 F.4th at 716.

¹³⁴ *Towns of Concord*, 955 F.2d at 73 (quoting 16 U.S.C. § 825h).

¹³⁵ *Verso Corp. v. FERC*, 898 F.3d 1, 10 (D.C. Cir. 2018) (“Section 309 accordingly permits FERC to advance remedies not expressly provided by the FPA, as long as they are consistent with the Act”).

¹³⁶ See, e.g., *Am. Mun. Power*, 191 FERC ¶ 61,001 at PP 58-64; *Kendall Cnty. Solar Project, LLC v. PJM Interconnection, L.L.C.*, 189 FERC ¶ 61,068, at P 37 (2024); *Cal. Indep. Sys. Operator Corp.*, 188 FERC ¶ 61,136, at P 18 (2024).

¹³⁷ *La. Pub. Serv. Comm’n v. FERC*, 772 F.3d 1297, 1302 (D.C. Cir. 2014).

¹³⁸ *Id.* (internal quotation marks omitted); *XO Energy*, 77 F.4th at 716.

¹³⁹ First Rehearing Order, 191 FERC ¶ 61,089 at P 31.

consideration below and then explain our rationale for continuing to decline to grant the remedy.

1. Considerations Weighing Against Granting Remedy

36. We continue to find that several considerations weigh against granting the requested remedy.

a. Reliability

37. First, Saavi's requested remedy could negatively affect reliability. CAISO explained, in short, that reinstating Unit C's deliverability status would lead to other generating units having equivalent reductions in their Net Qualifying Capacity, which would reduce the amount of resource adequacy capacity those units could provide to load-serving entities and their customers.¹⁴⁰ CAISO stated that "[s]tranded or unavailable deliverability would result in load-serving entities being unable to meet their [resource adequacy] obligations—jeopardizing reliability."¹⁴¹ We continue to find CAISO's argument logical. If deliverability status is reinstated for Unit C, it is logical that because Net Qualifying Capacity is finite, other units would face equivalent Net Qualifying Capacity reductions to accommodate that newly reinstated status. Accordingly, those reductions would negatively affect the amount of resource adequacy capacity that those units can provide. Ensuring sufficient resource adequacy capacity is fundamental to having the capacity needed to reliably serve the CAISO-controlled transmission grid. Importantly, Saavi provided no argument or evidence that subverts this commonsense reasoning.¹⁴²

38. On rehearing, Saavi asserts that the Commission erred in its discussion of reliability.¹⁴³ Saavi argues that the Commission relied on unsupported conclusions in the CAISO declaration.¹⁴⁴ To the contrary, the Commission found CAISO's argument, grounded in Tariff requirements and logic, persuasive.¹⁴⁵ Saavi also argues that Unit C is

¹⁴⁰ *Id.* P 24.

¹⁴¹ CAISO April 9, 2024 Answer at 5.

¹⁴² First Rehearing Order, 191 FERC ¶ 61,089 at P 25.

¹⁴³ Rehearing Request at 16.

¹⁴⁴ *Id.*

¹⁴⁵ First Rehearing Order, 191 FERC ¶ 61,089 at P 24.

“capable of providing resource adequacy but for [its lack of deliverability status].”¹⁴⁶ Yet Saavi still does not commit to providing resource adequacy capacity and implied the opposite.¹⁴⁷

39. As to the other generating units, Saavi argues that CAISO did not identify any units that would face Net Qualifying Capacity reductions.¹⁴⁸ CAISO did not need to identify specific units to demonstrate that these reductions would occur, however, because it is logical that other generating units would face reductions to accommodate Unit C’s reinstatement, and it was Saavi’s burden to refute that reasonable proposition.¹⁴⁹ Crucially, Saavi conceded that “deliverability is scarce in the electrical area of Unit C”¹⁵⁰ and that there are other “generators that would lose a small portion of their deliverability.”¹⁵¹ Saavi also argues that CAISO did not provide evidence these units are providing resource adequacy capacity.¹⁵² The Commission’s finding, however, was that deliverability status reinstatement could negatively affect reliability because those units would face reductions in “the amount of resource adequacy capacity those units *could* provide.”¹⁵³ Saavi asserts that the logic in the CAISO declaration “assumed” the validity of the BPM provision.¹⁵⁴ In fact, the BPM provision’s validity was irrelevant to this

¹⁴⁶ Rehearing Request at 16.

¹⁴⁷ First Rehearing Order, 191 FERC ¶ 61,089 at P 25 & n.89 (“Saavi did not allege that Unit C would use the deliverability status to provide resource adequacy.”); *see also* CAISO, CAISO eTariff, § 40.4.2 (Net Qualifying Capacity Report) (0.0.0).

¹⁴⁸ Rehearing Request at 6.

¹⁴⁹ *See NextEra Energy Res., LLC v. FERC*, 898 F.3d 14, 23 (D.C. Cir. 2018) (“We defer to the Commission’s reasoning when it relies on substantial evidence to make a predictive judgment in an area in which it has expertise, such as in the power markets.”).

¹⁵⁰ Saavi May 21, 2024 Answer at 6.

¹⁵¹ Saavi April 24, 2024 Answer at 10; *see also* Rehearing Request at 16 n.61.

¹⁵² Rehearing Request at 6.

¹⁵³ First Rehearing Order, 191 FERC ¶ 61,089 at P 24 (emphasis added).

¹⁵⁴ Rehearing Request at 6-7.

portion of the declaration, which covers what would happen if Unit C’s deliverability status were reinstated.¹⁵⁵

40. Saavi again claims that, if Unit C’s deliverability status were reinstated and Unit C did not use that status, then CAISO could allocate “interim deliverability” to generating units that would otherwise face Net Qualifying Capacity reductions.¹⁵⁶ As the Commission previously found, however, Saavi continues to fail to show how such a process to avoid Net Qualifying Capacity reductions could function under the Tariff.¹⁵⁷ Saavi does not explain how Unit C’s deliverability status could be reinstated without threatening to decrease other generating units’ Net Qualifying Capacity. We are unpersuaded by Saavi’s contention that the Tariff “plainly provide[s]” for such a result¹⁵⁸ because the Interim Deliverability provision that Saavi cites is inapposite. As an initial matter, Saavi never refuted CAISO’s explanation that this provision did not apply to Saavi.¹⁵⁹ In addition, the provision at issue relates to Interim Deliverability. That is, when certain generating units are waiting to receive Full Capacity Deliverability Status, they can temporarily receive, if available, the status of “Interim Deliverability.”¹⁶⁰ Saavi’s argument is unavailing even assuming that this status could be applied here. Saavi does not show that this proposal would prevent the Net Qualifying Capacity reductions at issue—rather than simply increasing the amount of deliverability status behind applicable deliverability constraints such that Net Qualifying Capacity would be reduced for generating units to accommodate the increased amount of deliverability status for Unit C. Put differently, Saavi does not cite any applicable mechanism for what might be described as “interim” *Net Qualifying Capacity redistribution*. Saavi also asserts that the Commission erred in rejecting this argument on the ground that Saavi did

¹⁵⁵ CAISO April 9, 2024 Answer, Declaration P 13.

¹⁵⁶ Rehearing Request at 7, 16.

¹⁵⁷ First Rehearing Order, 191 FERC ¶ 61,089 at P 25.

¹⁵⁸ Rehearing Request at 7 & n.23 (citing CAISO, CAISO eTariff, app. DD (Generator Interconnect & Deliverability Allocation Procedure), § 4 (Independent Study Process) (12.0.0), § 4.6 (Deliverability Assessments)).

¹⁵⁹ CAISO April 9, 2024 Answer at 22-23.

¹⁶⁰ CAISO, CAISO eTariff, app. DD (Generator Interconnect & Deliverability Allocation Procedure), § 4 (Independent Study Process) (12.0.0), § 4.6 (Deliverability Assessments).

not explain how the proposal would function under the Tariff.¹⁶¹ It is, however, Saavi's burden to establish its entitlement to relief.¹⁶² For the reasons above, Saavi did not do so.

41. Saavi argues that Unit C is "capable of providing resource adequacy but for the fact that its deliverability has been confiscated."¹⁶³ Whether or not this assertion is true, Saavi does not contest the Commission's finding that "if CAISO reinstated Unit C's deliverability status, it appears that Unit C would not *use* that status to provide resource adequacy."¹⁶⁴ The Commission based this finding on Saavi's Complaint.¹⁶⁵ Saavi's silence on this topic further suggests Unit C would not use reinstated deliverability status to provide resource adequacy. Nevertheless, if Unit C would do so, then other generating units would face Net Qualifying Capacity reductions to their detriment—as discussed further below.¹⁶⁶

b. Other Generating Units

42. Second, Saavi's requested remedy would harm the generating units that face Net Qualifying Capacity reductions. In the First Rehearing Order, the Commission found that

¹⁶¹ Rehearing Request at 7 (citing First Rehearing Order, 191 FERC ¶ 61,089 at P 24).

¹⁶² 16 U.S.C. § 824e(b). Saavi similarly did not raise a genuine issue of material fact that would warrant an evidentiary hearing. *See* Rehearing Request at 17; *see also* *Riverstart Solar Park LLC*, 185 FERC ¶ 61,101, at P 30 & n.81 (2023); *Sw. Power Pool, Inc.*, Opinion No. 579, 180 FERC ¶ 61,192, at P 52 (2022) ("The party with the burden of proof bears the burden of production, or the need to provide sufficient evidence to establish a *prima facie* case"), *order on reh'g*, Opinion No. 579-A, 182 FERC ¶ 61,014, at PP 19-26 (2023).

¹⁶³ Rehearing Request at 16.

¹⁶⁴ First Rehearing Order, 191 FERC ¶ 61,089 at P 25 (emphasis added).

¹⁶⁵ *Id.* P 25 & n.89 (noting that "Saavi did not allege that Unit C would use the deliverability status to provide resource adequacy") (citing Complaint at 12 (stating "[h]ad Saavi been on notice" Unit C "could have [been] reconnected to CAISO for a time in order to avoid being disconnected from CAISO for three consecutive years" and thus implying Saavi does not intend to reconnect Unit C for more than a temporary period)).

¹⁶⁶ *Id.* P 25 n.90 ("Even if Saavi intends to use deliverability status for Unit C, that use would still cause harms discussed in this section, such as other resources facing Net Qualifying Capacity reductions, increasing regulatory uncertainty, and the effects of Saavi's prejudicial delay.").

Saavi's requested remedy would harm these generating units, which are blameless, bona fide recipients of deliverability status, and which have made significant investment decisions in pursuit of, and reliance on, their highly valuable deliverability status.¹⁶⁷ Saavi argues that the Commission had no basis for the finding that these generators had made significant investment decisions in pursuit of, and reliance on, valuable deliverability status.¹⁶⁸ It is sensible to find, however, that many of these generating units likely played a role in funding interconnection studies and network upgrades and made investment decisions based on their deliverability status. Indeed, Saavi itself acknowledged that "other generating units" "may take . . . actions (e.g., executing power purchase agreements) relying on their current deliverability awards."¹⁶⁹ Saavi's own statements thus disprove its suggestion that "the *only* aggrieved party" could be Saavi.¹⁷⁰

c. Delay

43. Third, Saavi's unjustified and prejudicial delay in filing the Complaint weighs against imposing its requested remedy.¹⁷¹ On rehearing, Saavi argues the Commission erred in finding Saavi's delay unjustified and prejudicial.¹⁷² Saavi, however, does not dispute the Commission's finding that Saavi previously "acknowledged that reinstating Unit C's status 'could inflict . . . prejudice on other generating units receiving allocations that may have to be clawed back, as they may take further actions . . . relying on their current deliverability awards.'"¹⁷³ Saavi argues that it delayed filing the Complaint until March 20, 2024, in order to accommodate negotiations with CAISO.¹⁷⁴ Saavi further

¹⁶⁷ *Id.* P 25 (citing *Investigation of Wholesale Rates of Pub. Util. Sellers of Energy & Ancillary Servs. in the W. Mkt. Sys. Coordinating Council*, 135 FERC ¶ 61,176, at PP 41-43 (2011)).

¹⁶⁸ Rehearing Request at 6.

¹⁶⁹ Saavi May 21, 2024 Answer at 8-9. To the extent Saavi's arguments about "interim deliverability" purport to mitigate the harms to these third-party generating units, the Commission's findings on this topic above are responsive here.

¹⁷⁰ Rehearing Request at 10.

¹⁷¹ First Rehearing Order, 191 FERC ¶ 61,089 at P 28.

¹⁷² Rehearing Request at 17-18.

¹⁷³ First Rehearing Order, 191 FERC ¶ 61,089 at P 28 (quoting Saavi May 21, 2024 Answer at 8-9).

¹⁷⁴ Rehearing Request at 17-18.

argues that these negotiations are in accordance with the Commission's policy of favoring settlements.¹⁷⁵ We agree that the Commission has a policy of favoring settlements, but that policy must be balanced against other considerations.¹⁷⁶ Had Saavi filed its Complaint sooner, settlement would have still been possible while the possibility of prejudice to third parties could have been lessened.¹⁷⁷

2. Considerations Saavi Raised

44. We also address several considerations Saavi raised in favor of the remedy.

a. Harm to Saavi

45. First, Saavi argues it was incorrectly deprived of its legitimately earned and valuable deliverability status.¹⁷⁸ Although we acknowledge that we do not order CAISO to reinstate Saavi's deliverability status, we continue to find that, as discussed above, Saavi has not indicated it intends to in fact use that deliverability status for Unit C.¹⁷⁹ Saavi states it may transfer the status to the BESS it is developing, which will not achieve commercial operation until the third quarter of 2027.¹⁸⁰

¹⁷⁵ *Id.*

¹⁷⁶ *Arkla Energy Res.*, 49 FERC ¶ 61,051, at 61,217 (1989) (finding that "the Commission's policy continues to favor settlements[, h]owever, in this case, our policy favoring settlements was outweighed by [another] policy").

¹⁷⁷ In addition, the remedy could increase regulatory uncertainty going forward. In the First Rehearing Order, the Commission explained that investors may be less likely to invest capital if deliverability status allocations were subject to future changes due to legal error; and this uncertainty could undermine investor confidence as they approach decisions about investing in generating units that could provide resource adequacy. First Rehearing Order, 191 FERC ¶ 61,089 at P 27. Saavi fails to address this finding. The Commission continues to find on rehearing that the requested remedy could increase regulatory uncertainty.

¹⁷⁸ Rehearing Request at 9-10.

¹⁷⁹ *See* Complaint at 12.

¹⁸⁰ *Id.* at 7-8. Saavi had argued in its first rehearing request that certain letters from CAISO implied Unit C retained status after the revocation occurred, but the Commission disagreed. First Rehearing Order, 191 FERC ¶ 61,089 at P 30. Saavi appears to abandon this argument, and we continue to find it unavailing.

b. Equitable Principle

46. Second, Saavi argues that the Commission should consider the equitable principle of “regard[ing] as being done that which should have been done.”¹⁸¹ This principle does not change the outcome of the Commission’s analysis here—our task is not merely to allocate ramifications equitably between Saavi and CAISO but to weigh all relevant equitable considerations, including the likelihood of harm to third-party generators that are blameless, bona fide recipients of deliverability status.

c. Consistency with Policies and Purposes of the FPA

47. Third, Saavi argues that denying the remedy would not “advance the policies” and purposes of the FPA because CAISO violated the filed rate doctrine.¹⁸² Yet, as *Towns of Concord* makes clear, denying a remedy for a violation of the filed rate doctrine can be consistent with the policies and purposes of the FPA.¹⁸³ It is here. Saavi raises several potential policies and purposes. First, Saavi argues that denying a remedy would not comport with the principle of “predictability.”¹⁸⁴ It is Saavi’s requested remedy, however, that would most undermine predictability by surprising third-party generating units with Net Qualifying Capacity reductions equivalent to Unit C’s amount of deliverability status. These third-party generating units would face these reductions even though they have not violated the Tariff and despite the fact that Saavi has not identified how these reductions could be effectuated under the Tariff. In other words, to the extent Saavi could show that it could not predict the deliverability status revocation and given the zero-sum nature of Net Qualifying Capacity behind a deliverability constraint, Saavi’s proposed remedy would inflict an equivalent unpredictable harm on multiple generating units. Second, Saavi mentions, without elaboration, “confidence in . . . market rules.”¹⁸⁵ For the reasons above, we continue to find that Saavi’s requested remedy would in fact decrease confidence on the margin.¹⁸⁶ Third, Saavi contends that denying a remedy “would disrupt the aims of the filed rate doctrine by . . . undermining fairness to parties

¹⁸¹ Rehearing Request at 14 (internal quotation marks omitted).

¹⁸² *Id.* at 4-5, 9-11.

¹⁸³ *Towns of Concord*, 955 F.2d at 74-75.

¹⁸⁴ Rehearing Request at 13-15.

¹⁸⁵ *Id.* at 13.

¹⁸⁶ *See supra* n.177.

relying on . . . the filed rate.”¹⁸⁷ Denying the remedy here would not, on balance, undermine fairness to the parties relying on the filed rate given, as discussed above, the harms to blameless, bona fide recipients of deliverability status, that have made significant investment decisions in pursuit of, and reliance on, their highly valuable deliverability status.¹⁸⁸ In addition, it appears that Unit C would not use the deliverability status.¹⁸⁹

48. Finally, Saavi asserts that “those trusted to administer tariffs across broad swaths of American geography would be unaccountable to the most obvious and just consequences of failing to follow their tariffs.”¹⁹⁰ To the contrary, the Commission held CAISO accountable for its violation of the rule of reason by finding that CAISO must place the BPM provision in its Tariff in order to apply it.¹⁹¹ Declining to provide a remedy to Saavi here does not render CAISO “unaccountable,” because regardless of the Commission’s decision on remedy, CAISO is not one of the parties that stands to gain or lose Net Qualifying Capacity.

3. Weighing the Equities

49. In considering and weighing the equities analyzed above, we continue to find that—on balance—the most reasonable decision is to decline to grant Saavi’s requested remedy of status reinstatement. As a general matter, we continue to find that the considerations that favor denying the requested remedy outweigh those that do not.¹⁹² We particularly emphasize that, if we were to grant the remedy, it appears that Saavi would not use the deliverability status until at least 2027, while there would be negative effects on reliability and for other generating units, as described above.¹⁹³

¹⁸⁷ Rehearing Request at 15 (internal quotation marks omitted).

¹⁸⁸ *See supra* P 42.

¹⁸⁹ *See supra* P 4141.

¹⁹⁰ Rehearing Request at 15.

¹⁹¹ *E.g.*, First Rehearing Order, 191 FERC ¶ 61,089 at P 22 n.76.

¹⁹² *Id.* P 31.

¹⁹³ *Id.*

The Commission orders:

In response to Saavi's request for rehearing, the First Rehearing Order is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Secretary.