

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

Pacific Gas and Electric Company) Poe Hydroelectric Project No. P-2107

**AMERICAN WHITEWATER AND CALIFORNIA SPORTFISHING PROTECTION
ALLIANCE'S OPPOSITION TO REQUEST FOR EXTENSION OF TIME**

I. Introduction

American Whitewater (AW) and the California Sportfishing Protection Alliance (CSPA) hereby respond in opposition to Pacific Gas and Electric Company's (PG&E or Licensee) request for extension of time to comply with ordering paragraph (E) of the Commission's February 28, 2022 Order Modifying and Approving Recreation Plan Under Article 404 (Recreation Plan Order) for the Poe Hydropower Project, P-2107, which obligates PG&E to consult with six listed parties regarding the final route for the Poe Hiking Trail and file a plan and schedule for construction of the trail for Commission approval within six months. PG&E has not shown its request for an extension of time is justified or otherwise reasonable. Instead, it appears that PG&E is seeking to stay a license requirement intended to protect public access and use of the project for recreation for potentially more than one year. We request the Commission deny the request and direct PG&E to comply within 45 days.

II. Background

On February 28, 2022, the Commission issued its Recreation Plan Order which modified and approved PG&E's Poe Recreation Management Plan¹. Ordering paragraph (E) requires the

¹ 178 FERC ¶ 62,116

Licensee to consult with six listed parties and file a plan and schedule for construction of the Poe Hiking Trail by August 29, 2022:

(E) Pacific Gas and Electric Company must consult with the U. S. Forest Service, California Department Fish and Wildlife, Butte County, Mike Taylor, American Whitewater, and the California Sportfishing Protection Alliance regarding the final route for the Poe Hiking Trail and the licensee must file, for Commission approval, within six months of issuance of this order, a plan and schedule for construction of the Poe Hiking Trail.

Ordering paragraph (F) states that “[t]he filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order.”

On March 30, 2022, PG&E filed for rehearing, claiming that the Commission’s modification of its Recreation Plan to require it to construct the Poe Hiking Trail is not supported by substantial evidence in the record.² PG&E did not request that the Commission stay the Recreation Plan Order in whole or part pending final decision on rehearing.

On May 2, 2022, the Commission denied the rehearing request by operation of law (Rehearing Order).³ In its notice of denial, the Commission stated that “[a]s provided in 16 U.S.C. § 825l(a), the request 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.” The Rehearing Order did not stay the effect of the Recreation Plan Order.

PG&E did not file for judicial review within 60 days of the Rehearing Order, *see* 16 U.S.C. § 825l(b).

² eLibrary no. 20220330-5259

³ 179 FERC ¶ 62,069

On August 3, 2022, PG&E filed for extension of time on the basis that the Commission had not yet issued the “future order,” suggested in the Rehearing Order, further addressing PG&E’s request for rehearing. PG&E requested an extension until 90 days after the Commission issues such a future order or until December 31, 2023, whichever comes first.

III. Argument

The Commission should deny PG&E’s request for extension of time because the request is not based on its need for additional time to continue good-faith work to comply with license requirements but is rather an attempt to stay the Commission’s Recreation Plan Order pending the Commission’s further reconsideration of PG&E’s request for rehearing. Such a stay is not warranted and granting this extension of time sets a poor policy precedent that may affect other Commission decisions.

Statutory law at 16 U.S.C. § 825I(c) and regulation at 18 C.F.R § 385.713(e) are unambiguous that a request for rehearing does not operate as a stay of the contested Commission order. This is so stated in ordering paragraph (F) of the Recreation Plan Order, and PG&E cannot claim to be unaware that its request for rehearing did not stay its obligations and six-month deadline regarding the Poe Hiking Trail requirements contained in ordering paragraph (E).

PG&E did not request or receive a stay from the Commission, nor would it have been able to meet the high bar established by the Commission to obtain a stay. It is unable to demonstrate significant injury absent a stay: the requirements to consult with stakeholders and develop a construction plan and schedule are not particularly burdensome. Nor can PG&E demonstrate that it would be impossible to comply with these license requirements.

Although it could have, PG&E did not elect to petition for judicial review of the Recreation Plan Order and request a stay from the court. With no administrative or judicial stay of the license requirements that PG&E is contesting in its request for rehearing, PG&E is obligated to fulfill those requirements.

However, since the Recreation Plan Order was issued over five months ago, PG&E performed no work to fulfill with its Poe Hiking Trail requirements. Instead, it waited until 18 business days prior to the order's six-month deadline to request an extension of time solely on the basis that the Commission has not yet substantively responded to its request for rehearing via an order on further reconsideration. With this request for extension of time, PG&E is now attempting to obtain an effective stay from the Commission without needing to meet the Commission's high bar for obtaining a stay.

PG&E is not seeking this extension of time to complete its ongoing, good-faith efforts to comply with its Poe Hiking Trail license requirements but rather to stay the requirements entirely until ninety days after the Commission substantively responds to its request for rehearing or for a fixed period of 1.4 years (until December 31, 2023). The extension of time request is tied directly and solely to its request for rehearing, not to a genuine need for additional time to comply with its license requirements. It is a plain attempt to obtain a "backdoor" stay.

A stay is not warranted now for the same reasons that PG&E would have been unable to obtain one from the Commission or the court: there is no significant injury to PG&E for fulfilling its Poe Hiking Trail license requirements and there is no impossibility to doing so, even if the Commission has not yet substantively responded to its request for rehearing through issuance of a future order. At the same time, continued delay of the implementation of its Poe Hiking Trail

requirements does cause harm to parties for which the trail is a bargained-for benefit, and continued delay is not in the public interest.

PG&E has not shown good cause for the Commission to grant an extension of time. The purpose of an extension of time is to allow a licensee additional time to comply with license requirements, not to facilitate postponement of the implementation of license requirements altogether. PG&E made a purely discretionary choice to perform no work at all on its Poe Hiking Trail requirements prior to its upcoming deadline, and this does not indicate good cause for an extension of time.⁴ Additionally, PG&E does not state why such a long delay is necessary for it to comply with Poe Hiking Trail license requirements.

More broadly, because the Commission is under no obligation to issue orders on further reconsideration for rehearing requests that have been denied by operation of law, and because there is also no deadline for any Commission response, granting extensions of time based solely on the fact that the Commission has not yet issued such a reconsideration would create uncertainty and delay in license implementation and harm the public interest.

IV. Conclusion

For the reasons detailed above, we request the Commission deny the request and direct PG&E to comply with ordering paragraph (E) of the Recreation Plan Order within 45 days.

This situation also clearly illustrates some of the problems that arise during the “in-between” time after a request for rehearing has been denied by operation of law and before the

⁴ See 18 C.F.R. § 385.2008(a).

Commission chooses to respond to the issues raised in the rehearing request via a subsequent order. The Commission should more globally address the procedural uncertainties posed by its post-*Allegheny* handling of rehearing requests.

Respectfully submitted,



Scott Harding
Stewardship Associate
American Whitewater
PO Box 34
Forks of Salmon, CA 96031
scott@americanwhitewater.org



Dave Steindorf
California Hydropower Specialist
American Whitewater
4 Baroni Drive
Chico, CA 95928
(530) 343-1871
dave@americanwhitewater.org



Chris Shutes
FERC Projects Director
California Sportfishing Protection Alliance
1608 Francisco St.
Berkeley, CA 94703
(510) 421-2405
blancapaloma@msn.com

Certificate of Service

I hereby certify that in accordance with 18 C.F.R. § 385.2010, I have this day caused the foregoing comments by American Whitewater and California Sportfishing Protection Alliance to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated August 18, 2022.

A handwritten signature in black ink that reads "Scott Harding". The signature is written in a cursive, flowing style.

Scott Harding
Stewardship Associate
American Whitewater
PO Box 34
Forks of Salmon, CA 96031
scott@americanwhitewater.org