

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

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Pacific Gas and Electric Company	)	
	)	
License Article 407 – Poe Hiking Trail	)	Project No. P-2107
Feasibility Study	)	
	)	

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**MOTION TO INTERVENE**

**BY**

**AMERICAN WHITEWATER**

**AND**

**CALIFORNIA SPORTFISHING PROTECTION ALLIANCE**

September 18, 2020

## **I. Introduction**

Pursuant to 18 C.F.R. § 385.210, § 385.212 and § 385.214, American Whitewater (AW) and the California Sportfishing Protection Alliance (CSPA) (collectively, Movants) move to intervene in response to Pacific Gas and Electric Company's (PG&E or Licensee) July 30, 2020 submittal of its Poe Hiking Trail Feasibility Study<sup>1</sup> for the Poe Hydroelectric Project No. 2107 (Project).

AW actively participated in the relicensing of the Project, having timely filed to intervene in the Federal Energy Regulatory Commission's (FERC or Commission) proceeding on April 28, 2004.<sup>2</sup> Of particular relevance to the current proceeding, AW requested and was granted rehearing on the License Order's omission of a feasibility study for a trail between Bardee's Bar and the Poe Powerhouse, which was recommended in the Environmental Assessment for relicensing.<sup>3</sup>

CSPA participated at the end of the relicensing proceeding for the Project.

Both AW and CSPA have been involved, and continue their involvement, in the implementation of the Project license.

## **II. Description of the Intervenors**

### **A) American Whitewater**

American Whitewater is a 501(c)(3) non-profit organization with a mission to conserve and protect America's whitewater resources and enhance opportunities to enjoy them safely.

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<sup>1</sup> PG&E, License Article 407 - Hiking Trail Feasibility Study for the Poe Hydro Project (Jul 30, 2020), eLibrary no. 20200730-5226 ("Feasibility Study").

<sup>2</sup> See eLibrary no. 20040428-5024. This motion went unopposed and, as such, AW became a party to relicensing proceeding 15 days after the motion was filed.

<sup>3</sup> See 167 FERC ¶ 61,047 (2019).

Founded in 1954, AW has over 6,000 members and 100 locally based affiliate clubs, representing the conservation interests of whitewater enthusiasts across the nation. American Whitewater has a strong interest in the future of the North Fork Feather River and, therefore, the implementation of the Poe Hydroelectric Project license. A significant percentage of our membership resides in California—a short driving distance from the Project for recreation.

### **B) California Sportfishing Protection Alliance**

California Sportfishing Protection Alliance (CSPA) is a 501(c)(3) non-profit, public benefit fishery conservation organization incorporated in 1983 to protect, restore and enhance the state's fishery resources and their aquatic ecosystems. CSPA works to ensure that public fishery resources are conserved to enable public sport fishing activity. As an alliance, CSPA represents over one thousand members that reside in California. CSPA's members enjoy angling and other recreational activities on the North Fork Feather River.

## **III. Service**

Movants request that they be added to the Commission's service list for this proceeding and that all service notices be sent via email only:

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#### **IV. Grounds for Intervention**

American Whitewater and CSPA's intervention is in the public interest pursuant to 18 C.F.R. § 385.210, § 385.212 and § 385.214. AW and CSPA represent members of the public who use the North Fork Feather River and adjacent lands affected by the Project. Additionally, AW and CSPA have direct and tangible interests in the planning, development, and management of the river's recreational resources for public access and use. The Licensee's hiking trail feasibility study and the implementation of Article 407 affects these interests. AW has unique expertise in whitewater recreation planning, management, safety, and access issues. CSPA has expertise in recreational angling and access issues. Both AW and CSPA have special knowledge of the Project, its license, and its impacts on river-related recreation resources. AW and CSPA will bring this expertise to this proceeding, and this will serve the public interest.

## V. Background

In its Final Environmental Assessment (EA) for Project relicensing, FERC recognized the need to develop opportunities for hiking in the Project area and recommended that the Licensee study the issue. Specifically, the EA recommended that the Licensee conduct a feasibility study on improving the abandoned trail between Bardees Bar and the downriver Poe Powerhouse (the Poe Hiking Trail) and compare the results of the study with the Licensee's September 2006 feasibility report on modifying an abandoned road for use as a trail in the upriver direction from Bardees Bar (the Bardees Bar Trail).<sup>4</sup>

The subsequent License Order did not reference or incorporate the final EA's analysis or recommendations, and AW requested rehearing to clarify the Licensee's obligations with respect to the development of a riverside hiking trail.<sup>5</sup> The Commission granted this request and ordered the addition of Article 407 to the license:

*Article 407. Hiking Trail Feasibility Study.* Within 9 months of license issuance, the licensee must conduct a feasibility study on improving an existing abandoned trail between Bardees Bar and the Poe powerhouse road and compare the results of this study with the information provided in PG&E's September 2006 feasibility report on modifying the abandoned construction road, upstream of Bardees Bar, for use as a trail; and if feasible, based on the results of the study, include in the Recreation Plan a schedule for constructing an all-weather hiking trail in one of the two locations.<sup>6</sup>

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<sup>4</sup> FERC, Final Environmental Assessment, Poe Hydroelectric Project No 2107-016 (March 2007), eLibrary no. 20070329-3045 at 249-251.

<sup>5</sup> AW, Request for Rehearing and/or Clarification – Poe Hydroelectric Project (January 16, 2019), eLibrary no. 20190116-5092.

<sup>6</sup> See 167 FERC ¶ 61,047.

This specific requirement is consistent with PG&E's broader requirement under Standard License Article 18 to "allow the public free access, to a reasonable extent, to project waters and adjacent project lands...for outdoor recreational purposes...."

At PG&E's request, the Commission granted two extensions of time for completing the requirements of Article 407, and on July 30, 2020 PG&E submitted its Poe Hiking Trail Feasibility Study to the Commission. In addition to the feasibility study, the Licensee's submission includes a discussion of additional information and a separate budget that it used in lieu of the study's budget to make its determination that construction of the Poe Hiking Trail is infeasible. The Licensee also determined that construction of the Bardee's Bar Trail is infeasible and, therefore, did not submit a schedule for constructing a riverside trail.

## **VI. Statement of Position**

PG&E's riverside trail feasibility determination does not follow the specific procedures laid out in Article 407. To the extent that PG&E is proposing to modify its obligations to investigate the feasibility of and then construct a hiking trail, the Commission should notice that change and solicit public comment and intervention. While the change does not relate to project operations, exclusion of reasonable recreational uses at the Project is a significant issue affecting the public, and the public should have an opportunity to formally comment and participate in FERC's proceeding on PG&E's request.

Specifically, Article 407 requires PG&E to 1) conduct a feasibility study for constructing the Poe Hiking Trail, 2) compare this to the earlier study results for the Bardee's Bar Trail, and 3) make a feasibility determination "based on the results of the study."

PG&E contracted with the Butte County Resource Conservation District (RCD) to conduct the study. It worked with the RCD to address inadequacies in the preliminary cost estimates prior to completing the final study.<sup>7</sup> Although PG&E appears dissatisfied with the feasibility study and its conclusion, we do not challenge that PG&E fulfilled its Article 407 obligation to complete the study.

PG&E's comparison of the results of the two feasibility studies for the two trail alternatives amounts to a single sentence<sup>8</sup> that summarizes the results of the 2006 study but provides no actual comparison between the results of the two studies as required by the license. We assert that this sentence does not constitute the comparison described in Article 407 and that PG&E has not met its obligation in this regard.

Article 407 clearly requires PG&E to make its riverside hiking trail feasibility determination "based on the results of the study." Apparently dissatisfied with the feasibility study's content and conclusion, PG&E utilized information not included in the study to make its feasibility determination. This additional information includes PG&E's own assessment of the trail's "adverse impacts to private property" and "adverse impacts on environmental resources."<sup>9</sup> Although PG&E states that it worked with RCD to resolve inadequacies in the preliminary cost estimates in the draft feasibility study, it completely replaced the final study's cost estimate for its own, external cost estimate when making its feasibility determination.<sup>10</sup> This separate cost estimate states a Poe Hiking Trail construction cost that is nearly six-fold greater than RCD's

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<sup>7</sup> Feasibility Study submittal letter at 2.

<sup>8</sup> Feasibility Study at 4 and repeated in submittal letter at 2-3.

<sup>9</sup> Feasibility Study submittal letter at 3.

<sup>10</sup> PG&E's letter makes clear that it utilized a cost estimate that is not part of the feasibility study (submittal letter at 4), and that PG&E attached its own cost estimate to its submittal, separate from the feasibility study, as Attachment 2.

cost estimate, and it is clear that this estimate was produced primarily as a desktop exercise rather than from a detailed field review.<sup>11</sup> Irrespective of how PG&E produced its separate Poe Hiking Trail cost estimate, its use of this estimate rather than that which is contained in the feasibility study does not conform to Article 407's requirement that PG&E base its feasibility determination on the result of the study.

The EA and feasibility study both found that there is a need to develop hiking trails in the Project area. However, PG&E supplanted its own opinion on this matter when making its feasibility determination. This, again, relies on information not included in the feasibility study and is counter to the Commission staff's own recommendation in the EA and the RCD's conclusion in the feasibility study. Article 407 does not provide that PG&E re-interpret the EA or feasibility study.

It is clear from PG&E's own submittal that it did not follow the specific procedures of Article 407 in making its feasibility determination. As such, its determination is not valid, and the Commission should not accept or approve this determination.

We note that while PG&E asked for two extensions from the Commission for filing, it did not use this time to consult with Movants, local communities, or other interested members of the public before filing the Poe Hiking Trail Feasibility Study with the Commission.

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<sup>11</sup> See the "Notes/Description" columns in PG&E Cost Estimate for Poe Trail Construction (Attachment 2) for descriptions such as "[d]id not get first-hand look at this section," and "only saw lower end of section 4" that indicate this estimate was produced with a lack of information and abundant assumptions.



## VII. Conclusion

Movants respectfully request that the Commission grant this Motion to Intervene and that the Commission initiate a proceeding to provide the public with an opportunity to formally comment on the feasibility of the Poe Hiking Trail and otherwise participate in the Commission's determination on this issue.

Respectfully submitted,



Theresa Simsiman  
California Stewardship Director  
American Whitewater



Dave Steindorf  
California Hydropower Specialist  
American Whitewater



Chris Shutes  
FERC Projects Director  
California Sportfishing Protection Alliance

## Certificate of Service

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

Dated September 18, 2020.

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

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