

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

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

**COMPLAINT OF NON-COMPLIANCE WITH LICENSE REQUIREMENTS**

**I. Introduction**

Pursuant to Section 306 of the Federal Power Act (FPA), 16 U.S.C. § 825e, American Whitewater and the California Sportfishing Protection Alliance (Complainants) file this complaint against the Pacific Gas and Electric Company (Respondent or PG&E) for its failure to comply with license requirements related to the planning and construction of the Poe Hiking Trail. Complainants request that the Commission, pursuant to FPA Section 31(a), 16 U.S.C. § 823b(a), promptly issue an order instructing PG&E to fulfill its Poe Hiking Trail license obligations in good faith within 45 days.

**II. Background**

On February 28, 2022, the Commission issued its Order Modifying and Approving Recreation Plan Under Article 404 (Recreation Plan Order) which modified and approved PG&E’s Poe Recreation Management Plan.<sup>1</sup> Ordering paragraph (E) requires the Licensee to consult with six listed parties and file a plan and schedule for construction of the Poe Hiking Trail by August 29, 2022:

---

<sup>1</sup> 178 FERC ¶ 62,116

*(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 Poe Recreation Management Plan to require it to construct the Poe Hiking Trail is not supported by substantial evidence in the record.<sup>2</sup> 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).<sup>3</sup> 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).

---

<sup>2</sup> eLibrary no. 20220330-5259

<sup>3</sup> 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, which, if issued, would further address PG&E’s request for rehearing.<sup>4</sup> PG&E requested an extension until 90 days after the Commission issues such a future order or until December 31, 2023, whichever comes first.

On August 18, 2022, Complainants filed comments in opposition to PG&E’s request for extension of time and called out the fact that PG&E’s request was tantamount to request for a stay on the Commission’s Recreation Plan Order without meeting the standard necessary to obtain a stay.<sup>5</sup>

As of the date of this filing, the Commission has not granted an extension of time, nor has it stayed its Recreation Plan Order. The order remains in force.

### **III. License Violation**

The Poe Recreation Management Plan, as modified by the Commission, requires PG&E to consult with six listed parties and file a plan and schedule for construction of the Poe Hiking Trail by August 29, 2022. Plainly and indisputably, PG&E has not fulfilled these obligations.

PG&E’s non-compliance is willful and voluntary: there are no external factors that have caused it to be unable to comply with the relevant license requirements. The three specified Poe Hiking Trail license requirements follow a sequence: first, consult with listed parties; second, develop a

---

<sup>4</sup> eLibrary no. 20220804-5010

<sup>5</sup> eLibrary no. 20220818-5158

construction plan; and third, develop a schedule for implementing the plan. PG&E has made no effort to fulfill these requirements, and it has not even contacted the parties to be consulted in the first step of the sequence.

PG&E's non-compliance is open and intentional. It is fully aware that the Poe Hiking Trail license requirements are in effect, and it is choosing to disobey the Commission by not complying with the Recreation Plan Order. Non-compliance is PG&E's strategy for delaying all work on the Poe Hiking Trail, and this non-compliance is functioning as a licensee-issued stay on the Commission's order.

#### **IV. Relief Requested**

Complainants request that the Commission, pursuant to FPA Section 31(a), 16 U.S.C. § 823b(a), promptly issue an order instructing PG&E to fulfill its Poe Hiking Trail license obligations in good faith within 45 days.

#### **V. Conclusion**

PG&E's failure to initiate consultation regarding the Poe Hiking Trail is a self-evident license violation. The Commission should not countenance PG&E's back-door stay and selective license compliance. The Commission should issue a notice of violation to PG&E and require PG&E to comply with ordering paragraph (E) of the February 28, 2022 Order within 45 days.

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 complaint 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 September 30, 2022.

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

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