

181 FERC ¶ 61,040
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

Pacific Gas and Electric Company

Project No. 2107-047

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING
AND DISMISSING REQUEST FOR EXTENSION OF TIME

(Issued October 20, 2022)

1. On February 28, 2022, Commission staff modified and approved a Recreation Plan filed by Pacific Gas and Electric Company (PG&E), licensee for the Poe Hydroelectric Project No. 2107, to enhance the project’s recreational facilities.¹ On March 30, 2022, PG&E requested rehearing of one aspect of the Approval Order – the requirement to construct and operate the Poe Hiking Trail.

2. Pursuant to *Allegheny Defense Project v. FERC*,² 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,³ we are modifying the discussion in the Approval Order and continue to reach the same result in this proceeding, as discussed below.⁴

¹ *Pacific Gas & Elec. Co.*, 178 FERC ¶ 62,116 (2022) (Approval Order).

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

³ 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.”).

⁴ *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the Approval Order. See *Smith Lake Improvement & Stakeholders Ass’n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

I. Background

3. The 143-megawatt Poe Project is located on the North Fork Feather River, immediately upstream of Lake Oroville, in Butte County, California, and consists of the following features: (1) a 400-foot-long, 60-foot-tall diversion dam, including five radial gates and a skimmer gate, which is no longer used; (2) the 53-acre Poe Reservoir with a usable storage capacity of 1,203 acre-feet; (3) an approximately 6.5-mile-long tunnel and penstock, which conveys water to the Poe powerhouse; (4) the Big Bend Dam and Reservoir, which serves as the afterbay for the project; (5) the Poe powerhouse, which consists of two turbine-generator units; (6) various recreation sites; and (7) other appurtenant facilities. Among the project's recreation sites is Bardees Bar, a site along the bypassed reach of the North Fork Feather River used occasionally for overnight camping, picnicking, and boating. The project occupies federal land within the Plumas National Forest administered by the U.S. Department of Agriculture, Forest Service (Forest Service).

4. On March 29, 2007, Commission staff issued an environmental assessment for the project, finding that, *inter alia*, “there is need for recreation enhancement in the project area, which is in a particularly scenic reach of the [North Fork Feather River], and [that] these enhancements would likely be utilized immediately by recreational users.”⁵ To accommodate this need for recreation, staff recommended construction of recreational improvements including either the Bardees Bar Trail⁶ or the Poe Hiking Trail.⁷

5. On December 17, 2018, Commission staff issued a new license for the project (License Order).⁸ Article 203 of the license required PG&E to add the Bardees Bar Trail to the Exhibit G project boundary maps. Article 404 of the project license required the licensee to file a Recreation Plan for Commission approval.

6. On January 15, 2019, PG&E filed a request for rehearing arguing, *inter alia*, that reference to the Bardees Bar Trail should be removed from Article 203 since Commission staff did not recommend, and the License Order did not require, the development of the Bardees Bar Trail. On January 16, 2019, American Whitewater

⁵ Final EA at 248.

⁶ The Bardees Bar Trail is an abandoned construction road located upstream of Bardees Bar that is used as trail.

⁷ The Poe Hiking Trail is an existing abandoned trail located downstream of Bardees Bar that connects Bardees Bar and the Poe powerhouse road.

⁸ *Pacific Gas & Elec. Co.*, 165 FERC ¶ 62,172 (2018) (License Order).

filed a request for rehearing asking that the Commission clarify what PG&E's obligations were with respect to the development of a riverside hiking trail.

7. On April 18, 2019, the Commission granted rehearing of the License Order.⁹ The Commission agreed to remove the requirement to include Bardees Bar Trail within the project boundary, but also found that PG&E should conduct a feasibility study on improving a trail between Bardees Bar and the Poe powerhouse road (the Poe Hiking Trail) and compare the results of that study with information PG&E had previously provided on improving the Bardees Bar Trail.¹⁰ The Commission also required that, if feasible based on the results of the study, PG&E must include in the Recreation Plan a schedule for constructing an all-weather hiking trail at either the Bardees Bar or Poe location.¹¹

8. PG&E retained Butte County Resource Conservation District, a firm experienced in conducting trail studies, project management, environmental surveys, and trail grant acquisition, to perform the feasibility study.

9. On July 30, 2020, PG&E filed the results of the feasibility study with the Commission. The feasibility study concluded that, "the backdrop [of the Poe Hiking Trail] is stunning and allows for a valuable recreational trail experience that provides amazing vistas and access to the North Fork of the Feather River."¹² It further found that the number of managed trails in Butte County was limited and the addition of the Poe Hiking Trail "would be a valued recreational opportunity for residents and visitors alike."¹³ While the feasibility study acknowledged challenges associated with the construction and maintenance of the Poe Hiking Trail including cost, acquiring the necessary property interests in private land,¹⁴ and the infrequent maintenance of access

⁹ *Pacific Gas & Elec. Co.*, 167 FERC ¶ 61,047 (2019) (2019 Rehearing Order).

¹⁰ *Id.* PP 18-19.

¹¹ *Id.* P 19 & ordering para. (C)(5).

¹² *Pacific Gas & Elec. Co.*, Filing, Docket No. P-2107-001, attach. 1 at 11 (filed July 30, 2020).

¹³ *Id.* at 6.

¹⁴ The proposed trail would primarily be located on land administered by the Forest Service. However, it would also cross two privately held parcels. *Id.* at 4 & fig. 2a.

roads leading to the trail,¹⁵ it also outlined ways these challenges could be minimized or avoided. Additionally, the feasibility study assessed the Bardees Bar Trail, and found that that trail would be costly, see low estimated use, and provide low recreational value.¹⁶

10. Notwithstanding the feasibility study's positive conclusions regarding the Poe Hiking Trail, PG&E found that the study's conclusions "do[] not address the feasibility of development of the trail by PG&E at the proposed location."¹⁷ Therefore, PG&E submitted a transmittal letter along with the feasibility study arguing that the Poe Hiking Trail was, in fact, infeasible due to adverse impacts to private property and the environment, cost, and lack of demand.¹⁸ PG&E also disagreed with the feasibility study's cost estimate for trail construction and submitted its own cost estimate which was significantly higher. The feasibility study estimated the total cost to construct the Poe Hiking Trail to be \$645,864,¹⁹ while PG&E estimated it to be \$2,473,325.²⁰

11. On September 30, 2020, PG&E filed its Recreation Plan with the Commission. The Recreation Plan did not include a plan and schedule for constructing either the Bardees Bar Trail or the Poe Hiking Trail.

12. American Whitewater, Butte County Board of Supervisors, California Department of Fish and Wildlife, Forest Service, and one individual, Mike Taylor, filed comments disputing PG&E's conclusions and providing additional information in support of the Poe Hiking Trail.²¹ On October 19, 2020, and February 5, 2021, PG&E filed answers to these comments.

¹⁵ *Id.* at 7-8.

¹⁶ *Id.* at 4.

¹⁷ Pacific Gas & Elec. Co. July 30, 2020, Filing at 2.

¹⁸ *Id.* at 1.

¹⁹ Pacific Gas & Elec. Co. July 30, 2020, Filing, attach. 1 at 10.

²⁰ Pacific Gas & Elec. Co. July 30, 2020, Filing at attach. 2.

²¹ American Whitewater, Filings, Docket No. 2107-000 (Sept. 18, 2020 and Feb. 11, 2022); Butte County Board of Supervisors, Filing, Docket No. P-2107-000 (Oct. 7, 2020); California Department of Fish and Wildlife, Filing, Docket No. P-2107-000 (Oct. 21, 2020); Forest Service, Filing, Docket No. P-2107-000 (Dec. 18, 2020); and Mike Taylor, Filing, Docket No. P-2107-000 (Dec. 22, 2020).

13. On February 28, 2022, Commission staff approved PG&E's Recreation Plan with modifications. As relevant here, the staff disagreed that the Poe Hiking Trail was not feasible, noting that the feasibility study presented information indicating that PG&E's concerns could be addressed.²² Regarding adverse impacts to private property, the Approval Order cited the feasibility study's finding that if PG&E were unable to secure permission from private landowners, the opportunity exists for two looped-trail routes which would not require access to private lands.²³ Regarding adverse impacts to environmental resources, the Approval Order cited comments from the Forest Service stating that environmental effects associated with trail construction could be avoided and or minimized through careful routing and by employing site-specific mitigation techniques.²⁴ Regarding costs, the Approval Order concluded that the feasibility study's cost estimate was persuasive, especially in light of comments from the Forest Service indicating a willingness to help keep costs down and offering its opinion that the feasibility study's cost estimate aligned with its own experience in trail construction costs.²⁵ Regarding lack of demand, the Approval Order cited evidence from the final environmental assessment prepared in the relicensing proceeding indicating that demand for hiking and biking in the area is expected to increase by 100% in the next 30 years.²⁶ The Approval Order also relied on evidence submitted by the Forest Service that potential use of the trail is higher than PG&E anticipates.²⁷ The order further noted that the feasibility study suggested that a phased approach to trail construction would help to accommodate a variety of challenges posed by trail construction, including costs and environmental impacts.²⁸ The Approval Order concurred with the licensee's determination that the development of the Bardees Bar Trail would be costly, would see low estimated use, and provide low recreational value.²⁹ The Approval Order required PG&E to consult with stakeholders on a final route for the Poe Hiking Trail and provide a

²² Approval Order, 178 FERC ¶ 62,116 at P 26.

²³ *Id.* P 27.

²⁴ *Id.*

²⁵ *Id.* P 28.

²⁶ *Id.* P 29.

²⁷ *Id.*

²⁸ *Id.* P 27.

²⁹ *Id.* P 26.

plan and schedule for constructing the trail within six months of the issuance of the Approval Order.³⁰

14. On March 30, 2022, PG&E requested rehearing.

15. On August 4, 2022, PG&E filed a request for an extension of time to file a plan and schedule for construction of the Poe Hiking Trail, pursuant to the Approval Order arguing that the order on rehearing “may modify or set aside the requirement to file a plan and schedule.”³¹ Specifically, PG&E requests that the six-month timeline be extended until 90 days after the Commission issues the order on rehearing or December 31, 2023, whichever comes first.³²

16. On August 18, 2022, American Whitewater and California Sportfishing Protection Alliance filed responses opposing PG&E’s request for extension of time “because the request is not based on [PG&E’s] 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.”³³

II. Discussion

17. Article 407 of the license states:

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.

The text of the Article specifically directs that the determination of trail feasibility be based on the results of the feasibility study and, if feasible, PG&E is required to include the trail in the Recreation Plan. PG&E acknowledges that the feasibility study performed by its consultant, Butte County Resource Conservation District, is that required under

³⁰ *Id.* at ordering para. (E).

³¹ Pacific Gas & Elec. Co., Filing, Docket No. P-2107-000, at 1 (Aug. 4, 2022).

³² *Id.*

³³ American Whitewater, Filing, Docket No. P-2107-000, at 3 (Aug. 18, 2022).

Article 407.³⁴ Nevertheless, PG&E argues that its own study was not adequate to assess the trail's feasibility,³⁵ although that was the purpose of the study and PG&E elected to submit it to the Commission.³⁶ And rather than rely on the feasibility study, PG&E argues that Commission staff should have relied on PG&E's supplementary evidence, which indicated that the trail was not feasible.³⁷

18. While the study, which was the evidence on the subject of feasibility provided by PG&E, supports Commission's decision, it was only part of the record. While Article 407 requires that the feasibility determination be based on the feasibility study, Commission staff also carefully examined all additional evidence submitted by PG&E and others to determine if the results of the feasibility study were sufficient to make a feasibility determination. As discussed more fully below, staff reasonably concluded that the Poe Hiking Trail was feasible.

A. Adverse Impacts on Private Property

19. On rehearing, PG&E argues that Commission staff did not appropriately consider "adverse impacts on private property" claiming that staff failed to address PG&E's concern that notice, such as the notice required under 18 C.F.R. § 5.18(c)(1)(J) (2021), to landowners whose land may be subject to eminent domain, would be required before their land could be included within the project boundary.³⁸

20. We find that Commission staff appropriately considered adverse impacts on private property. While the feasibility study acknowledged that use of private land could be a challenge if the landowners object, the study found "it would be feasible to construct two loop [trail] options that do not rely on access to the private property segments"

³⁴ Rehearing Request at 4 ("To comply with Article 407, PG&E retained Butte County Resource Conservation District [] to assess the feasibility of constructing and maintaining the Poe Hiking Trail.").

³⁵ Pacific Gas & Elec. Co. July 30, 2020 Filing at 2 ("Th[e] conclusion [of the feasibility study] does not address the feasibility of development of the trail by PG&E at the proposed location.").

³⁶ Pacific Gas & Elec. Co. July 30, 2020, Filing, attach. 1 at 3 ("Butte County Resource Conservation District [] was retained by PG&E to assess the feasibility of constructing and maintaining the Poe Hiking Trail.").

³⁷ Rehearing Request at 5.

³⁸ *Id.* at 6.

should it be necessary to avoid private property.³⁹ Further, the study concluded that landowners may not view construction of a trail on their land as “adverse.”⁴⁰ In fact, the owner of the larger of the two parcels of private land that the trail would cross states that “[a]s a landowner, I confirm my willingness to support the project and I am amenable to granting a right-of-way easement for the trail through my property.”⁴¹

21. Regarding notice to landowners, the Commission’s regulations provide that license applicants proposing to expand a project boundary to include additional land must provide notice to the owners of the additional land, as well as to interested governmental agencies, via certified mail of the proposed expansion.⁴² PG&E provides no further detail about how providing notice to landowners would make the trail infeasible. However, we note that should the final trail route cross private land, affected landowners as well as interested governmental agencies must be notified. Here, that would require sending a letter via certified mail to two landowners and several government agencies.

22. PG&E further argues that the two looped alternative routes identified in the feasibility study were not sufficiently detailed for Commission staff to determine if the alternative routes are “cost effective, necessary, or feasible.”⁴³

23. As PG&E acknowledges, the feasibility study specifically concluded that, “it would be feasible to construct two loop options (north and south) that do not rely on access to the private property segments.”⁴⁴ While the feasibility study did note that the two looped alternative routes were “not highly developed in the field work or cost estimate,” it was reasonable for staff to rely on the report to conclude that the looped routes are feasible alternatives. PG&E’s contractor, Butte County Resource Conservation District, based its feasibility conclusion on mapping, research, and three site visits to the project area. The purpose of the field investigations was to “evaluate existing conditions along the potential trail route . . . and characterize the current condition *and alternatives*.”⁴⁵ The study found the approximate additional cost of the North and South

³⁹ Pacific Gas & Elec. Co. July 30, 2020, Filing, attach. 1 at 7.

⁴⁰ *Id.*

⁴¹ American Whitewater February 11, 2022, Filing at attach. 1.

⁴² 18 C.F.R. § 5.18(c)(1)(J).

⁴³ Rehearing Request at 6.

⁴⁴ Pacific Gas & Elec. Co. July 30, 2020, Filing, attach. 1 at 7.

⁴⁵ *Id.* at 3 (emphasis added).

loops to be \$56,400 and \$46,000, respectively. The Approval Order requires PG&E to consult with stakeholders on a final route, while acknowledging that the alternative loops will need further refinement if the licensee is unable to secure permission from private landowners to allow the trail to cross their lands.⁴⁶

B. Adverse Impacts on Environmental Resources

24. PG&E argues that the Approval Order inappropriately dismissed its concerns that trail construction would harm environmental resources including archaeological sites and sensitive habitat near stream crossings.

25. We find that Commission staff appropriately considered adverse impacts on environmental and cultural resources. PG&E fails to identify any specific cultural or environmental resources that would be negatively impacted by construction of the Poe Hiking Trail. Instead, it generally notes that “cultural resources and sensitive species are known to occur” in the project area.⁴⁷ PG&E’s July 30, 2020 letter provides slightly more specific information, noting that the proposed trail alignment crosses several streams “which are environmentally sensitive and provide habitat for Foothill Yellow Legged Frog, which may occur in the Project area.”⁴⁸ The feasibility study considered the environmental impacts from stream crossings and recommended that bridges be used “to limit the impact on aquatic organisms and reduce sediment loading associated with the trail construction.”⁴⁹ The Forest Service similarly stated that “the cultural and biological resource concerns raised by PG&E can be mitigated by adjusting the trail alignment or potentially including elements such as steps or bridges, to create a safe trail.”⁵⁰

C. Cost

26. PG&E argues that the Approval Order did not appropriately address its concerns that the costs associated with trail construction would be considerably higher than the feasibility study estimate because the Approval Order’s only response was to “reference Forest Service comments stating that the lower cost estimate . . . ‘is more in line with its experience in trail construction costs’ and that ‘[the Forest Service] would be willing to

⁴⁶ Approval Order, 178 FERC ¶ 62,116 at P 27.

⁴⁷ Rehearing Request at 7.

⁴⁸ Pacific Gas & Elec. Co. July 30, 2020, Filing at 4.

⁴⁹ Pacific Gas & Elec. Co. July 30, 2020, Filing, attach. 1 at 10.

⁵⁰ Forest Service December 18, 2020, Filing at 3.

work with the licensee regarding modification of standards.”⁵¹ In particular, PG&E states that the Approval Order did not “address concerns raised by PG&E as to how the Forest Service could minimize costs associated with stream crossing permitting (Clean Water Act sections 404 and 401), Endangered Species Act-related permitting, and license plan compliance (e.g., Historic Properties Management Plan and other ground disturbing activity requirements).”⁵²

27. We find that the Approval Order reasonably relied on the feasibility study estimate. The feasibility study explains that the cost estimate was based on “all the elements involved in the planning, construction and maintenance of the project”⁵³ and the itemized budget included in the study contains a line item for “NEPA/ Enviro Review.”⁵⁴ The study also notes that the cost estimates were based on the “high end” due to higher material and labor costs.⁵⁵ Moreover, PG&E does not argue or provide any evidence to suggest that even if the cost were closer to \$2,473,325 rather than the estimated \$645,864 it would render the trail infeasible. Additionally, the Forest Service has concurred that the feasibility study’s estimate was reasonable.⁵⁶ Contrary to PG&E’s assertion, neither the Approval Order nor the Forest Service suggested that the Forest Service could minimize cost associated with permitting or license compliance. Instead, the Forest Service indicated a willingness to minimize cost through modification of its trail design standards.⁵⁷ We note that the feasibility study cost estimate does not rely on the Forest Service modifying its trail design standards. Even if the cost for the trail were closer to PG&E’s estimate, we would continue to find construction of the trail feasible.⁵⁸

⁵¹ Rehearing Request at 7 (quoting Approval Order, 178 FERC ¶ 62,116 at P 28).

⁵² *Id.* at 7-8.

⁵³ Pacific Gas & Elec. Co. July 30, 2020, Filing, attach. 1 at 10.

⁵⁴ *Id.* at fig. 3a.

⁵⁵ *Id.* at 10.

⁵⁶ Forest Service December 18, 2020 Filing at 3 (stating that “[t]he cost estimates developed by [the consultant] are in line with trail construction and maintenance costs for recent Forest Service trail projects.”).

⁵⁷ Trails built on Forest Service land must meet Forest Service trail design standards. The Forest Service states that it has the authority to modify these standards to address difficult terrain and cost. *Id.*

⁵⁸ The feasibility of the trail is based on the judgement of the Commission. *See* 16 U.S.C. § 803(a) (requiring that “the project adopted, including the maps, plans, and

28. We also clarify that the 2019 Rehearing Order's requirement for PG&E to construct an "all-weather trail," if feasible, was not meant to impose any specific Forest Service trail class standard.⁵⁹ Rather, "all-weather trail" refers to a trail suitable for year-round use. In this case, we see no reason why construction of a Forest Service Class 1 or 2 trail on Forest Service land would not fulfill the "all-weather trail" specification.

D. Need

29. PG&E argues that the Poe Hiking Trail is not needed because demand for hiking in the project area is "incredibly low" and that the Approval Order did not appropriately respond to these concerns.⁶⁰

30. This argument challenges aspects of the Commission's now-final 2019 Rehearing Order. The only evidence PG&E provides to support its assertion of "incredibly low" demand is from the recreational resource report that it submitted in 2001 as part of its license application. Commission staff has reviewed the 2001 resource report and has consistently found the need for hiking trails in the project area.⁶¹ The draft

specifications, *shall be such as in the judgment of the Commission* will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes" (emphasis added). Based on the information in the record, including recreational use and environmental surveys, staff concluded in the environmental assessment that "there is need for recreation enhancement in the project area, which is in a particularly scenic reach of the [North Fork Feather River], and [that] these enhancements would likely be utilized immediately by recreational users." Final EA at 248. The license order estimated that the power produced annually by this large (143 MW) hydroelectric project is valued at \$50,800,000 or \$102/MWh and that the annual operating costs would be about \$9,590,000 or \$19.3/MWh. License Order at P 96. Even if the trail cost \$2,500,000 as estimated by PG&E, the operating costs would only increase to \$19.38/MWh ($\$2,500,000 / 40 \text{ year license term} = \$62,000 \text{ per year}$; therefore $\$9,590,000 + \$62,000 = \$9,652,000 / 498,113 \text{ MWh generated annually} = \$19.38/\text{MWh}$). We conclude that the additional cost of the trail does not merit exclusion of the trail from the project when balanced with the benefits.

⁵⁹ Rehearing Request at 8.

⁶⁰ *Id.*

⁶¹ Draft EA, August 2, 2006, at 222 (finding "that there is a need for recreational enhancements in the project area" including the Bardees Bar hiking trail); Final EA at

environmental assessment recommended construction of the Bardees Bar trail as a recreational enhancement.⁶² Staff viewed this as a reasonable alternative to another trail on the east side of the river that was estimated to cost \$9.56 million.⁶³ PG&E filed similar comments opposing inclusion of the Bardees Bar Trail citing low demand, high construction costs, and the corresponding risk to sensitive resources.⁶⁴ After reviewing PG&E's comment, the final environmental assessment "continue[d] to recommend that PG&E develop a trail in the project area to address the expected hiking increase in the area, and to divert users away from sensitive resources."⁶⁵ Through comments on the

165 (finding that "there is a need to develop a trail in [the Poe reach] area in order to enhance recreational opportunities in the Feather River canyon and also to divert users away from sensitive resources."); Final EA at 248-49 (finding that "there is a need for recreational enhancements in the project area, which is in a particularly scenic reach of the [North Fork Feather River], and these enhancements would likely be utilized immediately by recreational users" and that this need justifies construction of either the Bardees Bar Trail or the Poe Hiking Trail); Final EA at 251 ("[A] new trail would address the need to increase hiking opportunities in the project area, which justifies the costs."); Final EA at C-20 (In response to PG&E's comments that "PG&E does not support a new trail upstream of Bardee's Bar due to the low anticipated recreational use, high construction cost, and the corresponding risk to sensitive resources, staff responded that "[w]e continue to recommend that PG&E develop a trail in the project area to address the expected hiking increase in the area, and to divert users away from sensitive resources."); *id.* (In response to a comment from Michael Taylor noting challenges to constructing the Bardees Bar trail and providing information about what is now known as the Poe Hiking Trail, staff noted the lack of information in the record about the Poe Hiking Trail, but stated that "[w]e agree . . . that hiking opportunities are needed in the project area . . . [T]his final EA, recommends that PG&E investigate the additional trail opportunity described by Mr. Taylor and report its findings to the Commission, including preference and rationale for developing either the upstream or downstream trail location.").

⁶² Draft EA at 222-23.

⁶³ *Id.* at 222.

⁶⁴ Pacific Gas & Elec. Co. Filing, Docket No. P-2107-000, at 9-11 (filed Sept. 19, 2006).

⁶⁵ Final EA at C-20; *see also id.* at 162 (finding that "hiking is one of the activities expected to increase by more than 100 percent in the project area . . . and that [a] trail that originates from Bardees Bar . . . could be used to divert users away from sensitive resources.").

draft environmental assessment, staff became aware of the trail now known as the Poe Hiking Trail. Based on the available data, the final environmental assessment found that the Poe Hiking Trail would provide needed access to the North Fork Feather River, provide scenic views, and cost less than the Bardees Bar Trail.⁶⁶ However, because the information on the Poe Hiking Trail available in the record was limited, staff recommended that PG&E undertake the feasibility study and, if called for by study results, develop a hiking trail at either Bardees Bar or the Poe Hiking Trail.⁶⁷ The Rehearing Order agreed with Commission staff's recommendation in the final environmental assessment that PG&E conduct a feasibility study on the Poe Hiking Trail.⁶⁸ Accordingly, the 2019 Rehearing Order instructed PG&E to include in the Recreation Plan "a schedule for constructing an all-weather hiking trail in one of the two locations [either the Bardees Bar Trail or the Poe Hiking Trail]" if the study showed such a trail to be feasible.⁶⁹ PG&E did not raise the concern that a trail was not needed when the 2019 Rehearing Order required a feasibility study for a trail.

31. PG&E's argument here that the Poe Hiking Trail is not needed is an impermissible collateral attack on the 2019 Rehearing Order. As the Commission has previously found, "[c]ollateral attacks on final orders and relitigation of applicable precedent by parties that were active in the earlier cases thwart the finality and repose that are essential to administrative efficiency and are strongly discouraged."⁷⁰ We thus reject these arguments.

32. Nevertheless, we reiterate that PG&E provides no new evidence of lack of demand that was not already considered in the draft and final environmental assessments, License Order, and 2019 Rehearing Order.⁷¹ Moreover, the feasibility study found that "many trail users desire additional high-quality recreational trails in the area" and that "[t]he Poe Hiking Trail would be a valued recreational opportunity for residents and visitors

⁶⁶ *Id.* at 249-50.

⁶⁷ *Id.*

⁶⁸ 2019 Rehearing Order, 167 FERC ¶ 61,047 at P 19.

⁶⁹ *Id.* at ordering para. (C)(5).

⁷⁰ *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs.*, 134 FERC ¶ 61,229, at P 15 (2011) (citing *Entergy Nuclear Operations, Inc. v. Consol. Edison Co. of N.Y., Inc.*, 112 FERC ¶ 61,117, at P 12 (2005)).

⁷¹ *See supra* P 30 and note 59.

alike.”⁷² The study further noted that additional whitewater releases in the Poe Reach as a result of relicensing are expected to increase demand for recreational use.⁷³ The feasibility study also identified secondary benefits of the trail such as better access for scientists to monitor environmental and ecosystem health, allowing firefighters safer and faster access for fire suppression, and preventing use of unmaintained trails that cause increased negative impact to natural resources.⁷⁴ Additionally, several commenters provided new evidence of demand for a trail in the area.⁷⁵ We agree that the trail is needed and will provide valuable recreation opportunity along a scenic section of the North Fork Feather River.⁷⁶ As noted above, the relevant question here is whether, based on the results of the study, the trail is feasible. We affirm that it is.

33. The Approval Order directed PG&E to “file, for Commission approval, within six months of issuance of this order, a plan and schedule for construction of the Poe Hiking Trail.”⁷⁷ The date for filing the plan was based on what Commission staff believed – given its assessment of circumstances relevant to the project – to be a reasonable period

⁷² Pacific Gas & Elec. Co. July 30, 2020, Filing, attach. 1 at 6 (finding that “many trail users desire additional high-quality recreational trails in the area The Poe Hiking Trail would be a valued recreational opportunity for residents and visitors alike.”).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Butte County Board of Supervisors October 7, 2020 Filing (noting strong support for a hiking trail in the area among residents of Butte County); Forest Service December 18, 2020 Filing at 4 (submitting survey results from the Plumas National Forest showing “extremely strong demand for trail opportunities”); American Whitewater February 11, 2022 Filing at 4-6 (summarizing record evidence of need for a trail).

⁷⁶ There is no inconsistency in finding greater demand for the Poe Hiking Trail as compared to the Bardees Bar Trail. The recreation value of each location is different, which would affect desirability and use. For example, the Bardees Bar Trail provides less scenic features and has a singular function as a casual hiking trail without ancillary activities such as fishing and swimming. PG&E July 30, 2020 Filing, attach. 1 at 4. In contrast, the Poe Hiking Trail is expected to provide exceptionally scenic views and includes development of two spur trails that would provide access to the river for additional recreational opportunities such as swimming and fishing. *Id.* at 9-10. Additionally, the length of the Bardee’s Bar Trail would be significantly less than the expected length of the Poe Hiking Trail (approximately 1.4 miles compared to approximately 3.6 miles). *Id.* at 4 and 9.

⁷⁷ Approval Order, 178 FERC ¶ 62,116 at ordering para. (E).

of time to complete the task. However, we will extend the time to file the plan and schedule for construction of the Poe Hiking Trail to 90 days from the date of this order. This extension should ensure PG&E sufficient time to consult with 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 trail.

34. We dismiss as moot PG&E's August 4, 2022, request for extension of time. This order grants PG&E the relief it seeks and extends the time to file a plan and schedule for construction of the Poe Hiking Trail.

The Commission orders:

(A) In response to Pacific Gas and Electric Company's request for rehearing, the Approval Order is hereby modified and the result sustained, as discussed in the body of this order.

(B) 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 90 days of issuance of this order, a plan and schedule for construction of the Poe Hiking Trail.

(C) Pacific Gas and Electric Company's August 4, 2022 request for extension of time to file a plan and schedule for construction of the Poe Hiking Trail, is hereby dismissed as moot.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.