

167 FERC ¶ 61,047  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur, Richard Glick,  
and Bernard L. McNamee.

Pacific Gas and Electric Company

Project No. 2107-021

ORDER GRANTING REHEARING

(Issued April 18, 2019)

1. On December 17, 2018, Commission staff issued a new license to Pacific Gas and Electric Company (PG&E) to operate and maintain the Poe Hydroelectric Project No. 2107 (Poe Project).<sup>1</sup> Timely requests for rehearing of the License Order were filed by PG&E and American Whitewater. For the reasons discussed below, we grant rehearing.

**I. Background**

2. On December 17, 2018, Commission staff issued a new 40-year license for the Poe Project.<sup>2</sup> The Poe Project, located on the North Fork Feather River in Butte County, California, immediately upstream from Lake Oroville, consists of the following features: (1) a 400-foot-long, 60-foot-tall diversion dam, including five radial gates and 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 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.

3. Among the recreation sites included in the project is Bardees Bar, a site along the bypassed reach of the North Fork Feather River used occasionally for overnight camping, picnicking, and boating. Bardees Bar is accessible only by Bardees Bar Road, an approximately 7-mile-long, county road that connects to State Highway 70 via Big Bend Road. Article 203 of the license requires PG&E to submit drawings that show 1.19 miles

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<sup>1</sup> *Pacific Gas & Electric Company*, 165 FERC ¶ 62,172 (2018) (License Order).

<sup>2</sup> License Order at ordering para. (A).

of Bardees Bar Road and recreation enhancements to Bardees Bar Trail, a trail in the area of Bardees Bar, within the project boundary.

4. On January 15, 2019, PG&E filed a request for rehearing of the License Order. Specifically, PG&E requests that the Commission: (1) modify the license term from 40 years to 50 years; (2) modify Article 203 of the license to reflect the actual length of Bardees Bar Road on property owned by PG&E; (3) remove the reference to Bardees Bar Trail in Article 203 of the license; (4) modify the license to reflect the authorized installed capacity of the project in accordance with the Commission's regulations; and (5) make minor corrections to the table included in Article 401(c) of the license. On January 16, 2019, American Whitewater filed a request for rehearing asking that the Commission clarify what PG&E's obligations are with respect to the Bardees Bar Trail.

## **II. Procedural Matters**

5. On February 19, 2019, the California Department of Fish and Wildlife (California DFW) filed comments "encouraging . . . adherence to the 40-year license term" and, citing the Commission's Policy Statement on Establishing License Terms for Hydroelectric Projects,<sup>3</sup> arguing that the improvements made by PG&E do not fall under authorized redevelopment, new construction, or environmental mitigation and enhancement. Although styled as comments, California DFW's pleading is an answer. Because rule 713(d)(1) of the Commission's Rules of Practice and Procedure prohibits an answer to a request for rehearing,<sup>4</sup> we reject California DFW's answer, but note that the issue it raises is addressed below.

## **III. Discussion**

### **A. License Term**

6. PG&E argues that the license term should be extended to 50 years because of the cost of significant capital improvements made by PG&E since the license application was filed. PG&E states that the Policy Statement allows the Commission to grant a license term longer than 40 years based on "significant measures implemented [by the licensee] during the prior license term that were not required by that license or other legal authority and for which the Commission had not already given credit through an extension of the

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<sup>3</sup> *Policy Statement on Establishing License Terms for Hydroelectric Projects*, 161 FERC ¶ 61,078 (2017) (Policy Statement).

<sup>4</sup> 18 C.F.R. §§ 385.213(a)(2) and 385.713(d)(1) (2018).

prior license.”<sup>5</sup> PG&E notes that the Policy Statement provides that the Commission will consider measures that “enhance the non-development project purposes,” such as environmental, project recreation, or water supply measures, and measures that “enhance the power and developmental purposes.”<sup>6</sup>

7. PG&E asserts that, since filing its license application in 2003, it has spent over \$54 million in capital improvements to enhance the power and developmental purposes of the project, and to implement environmental measures that were anticipated to be included in any new license.<sup>7</sup> PG&E states that none of these measures were required by the 1953 license or any other legal authority, and that PG&E could not have requested that the term of the 1953 license be extended because that license was issued for a period of 50 years.<sup>8</sup>

8. Specifically, PG&E states that it made the following improvements to the project: (1) generator and turbine improvements;<sup>9</sup> (2) gate replacements in anticipation of flow measures in the new license;<sup>10</sup> (3) gate control replacements in anticipation of ramping

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<sup>5</sup> PG&E Request for Rehearing at 6 (quoting Policy Statement, 161 FERC ¶ 61,078 at P 16).

<sup>6</sup> *Id.* (quoting Policy Statement, 161 FERC ¶ 61,078 at P 16).

<sup>7</sup> PG&E states that these anticipatory measures were based on conditions filed by mandatory conditioning agencies and on conditions required by the new license for the upstream Rock Creek-Cresta Project No. 1962. *Id.*

<sup>8</sup> *Id.* (noting that the Federal Power Act bars the Commission from issuing a license for longer than 50 years).

<sup>9</sup> PG&E states that between 2010 and 2012, it rewound one of the project’s generators, replaced the runners and wicket gates at one turbine, and replaced the runners at another turbine to improve efficiency of the project by increasing annual generation by 2.1 percent. PG&E asserts that these improvements cost approximately \$16 million. *Id.* at 7.

<sup>10</sup> PG&E states that between 2011 and 2018, it replaced or refurbished the four trunnion gates at Poe Dam in order to extend the life of the project assets. PG&E notes that the work also will allow the project to comply with ramping rate requirements included in the new license. PG&E asserts that the cost of the gate replacement was approximately \$28 million. *Id.* at 8.

rate requirements in the new license;<sup>11</sup> and (4) replacement of the cooling water system for turbine generator units and transformers.<sup>12</sup> PG&E asserts that these improvements were not contemplated by PG&E at the time it filed its license application in 2003, and were not required by the 1953 license or any other legal authority. PG&E argues that the improvements are clearly an action to enhance the power, developmental, and non-developmental purposes of the project and, in the case of the improvements to the gates, to facilitate compliance with anticipated environmental conditions. Thus, PG&E concludes that the costs should be considered by the Commission in determining the license term and that the license term should be extended to 50 years.

9. Section 15(e) of the Federal Power Act (FPA) provides that any new license issued shall be for a term that the Commission determines to be in the public interest, but no less than 30 years or more than 50 years.<sup>13</sup> On October 19, 2017, the Commission established a 40-year default license term policy for original and new licenses.<sup>14</sup> The Policy Statement provides for exceptions to the 40-year default license term under certain circumstances: (1) establishing a shorter or longer license term if necessary to coordinate license terms for projects located on the same river basin; (2) deferring to a shorter or longer license term explicitly agreed to in a generally-supported comprehensive settlement agreement; and (3) establishing a longer license term upon a showing by the license applicant that substantial voluntary measures were either previously implemented

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<sup>11</sup> PG&E states that between 2012 and 2018, it replaced the gate controls at each gate at Poe Dam. PG&E asserts that the replacement was done to increase the reliability of the flood gates to better control flow for environmental and other purposes, including compliance with ramping rate requirements anticipated by the new license. PG&E states that the cost of the gate controls was approximately \$4.7 million. *Id.* at 9.

<sup>12</sup> PG&E states that between 2012 and 2018, it replaced its cooling water system to prevent siltation and valve degradation, and improve the system so that each turbine-generator unit is cooled such that a problem in the cooling water system affecting one generator will no longer cause both units to go offline. PG&E asserts that the replacement was not a maintenance measure because the project could have continued to operate with the existing cooling water system. PG&E states that the cost of the cooling water system was approximately \$5 million. *Id.* at 10.

<sup>13</sup> 16 U.S.C. § 808(e) (2012).

<sup>14</sup> Policy Statement, 161 FERC ¶ 61,078.

during the prior license term, or substantial new measures are expected to be implemented under the new license.<sup>15</sup>

10. The America's Water Infrastructure Act of 2018 (2018 Water Infrastructure Act) was enacted on October 23, 2018.<sup>16</sup> Section 3005 of the act requires the Commission to give equal weight to investments by the licensee over the term of the existing license (including any terms under annual licenses) that resulted in redevelopment, new construction, new capacity, efficiency, modernization, rehabilitation or replacement of major equipment, safety improvements, or environmental, recreation, or other protection, mitigation, or enhancement measures conducted over the term of the existing license and were not expressly considered by the Commission as contributing to the length of the existing license term in any order establishing or extending the existing license term.<sup>17</sup>

11. We find that PG&E's investments justify a longer license term. As stated above, the 2018 Water Infrastructure Act requires the Commission to consider investments made by the licensee during the previous license term related to the "efficiency, modernization, rehabilitation or replacement of major equipment."<sup>18</sup> Here, PG&E's turbine and generator improvements enhance the efficiency of the project by increasing annual generation by 2.1 percent. Additionally, PG&E's replacement of the cooling water system will enhance the project's developmental purposes by allowing PG&E to isolate each turbine-generator so that both units may not experience a simultaneous outage. Last, PG&E's replacement (or refurbishment) of the four trunnion gates and replacement of the gate control system will extend the life of the project assets and provide for the implementation and enhancement of environmental measures at the project. Because PG&E's investments were related to improving the operational efficiency of the project, and modernizing and rehabilitating the project works and therefore qualify under the 2018 Water Infrastructure Act, we need not address whether they would have justified a longer license term under the Policy Statement, and conclude that, in light of the \$54 million investment by PG&E during its prior license, a 50-year license term is appropriate for the Poe Project.

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<sup>15</sup> *Id.* at 15-16.

<sup>16</sup> America's Water Infrastructure Act of 2018, Pub. L. No. 115-270, 132 Stat. 3765 (2018).

<sup>17</sup> 2018 Water Infrastructure Act § 3005(b)(2).

<sup>18</sup> *Id.* We note that this is a broader list of activities than the Commission discussed in its 2017 Policy Statement, which is the basis of California DFW's objection.

**B. Article 203 – Bardees Bar Road**

12. Bardees Bar, a flat, dirt area located on PG&E-owned property along the bypassed reach of the North Fork Feather River, is a recreation site used for camping, picnicking, and boating. Bardees Bar is accessible only by Bardees Bar Road, an approximately 7-mile-long, county road that is used for Union Pacific Railroad operations and to access private dwellings, as well as National Forest Service land.

13. PG&E requests that the Commission modify Article 203 of the license to reflect the actual portion of Bardees Bar Road located on property owned by PG&E. PG&E states that in the final Environmental Assessment (EA), Commission staff recommended “the last 1.19 miles of Bardees Bar Road located on PG&E land be included in the project boundary” and that Article 203 makes this a license requirement.<sup>19</sup> However, PG&E asserts that the actual portion of Bardees Bar Road located on PG&E property is only about 0.34 miles long.<sup>20</sup> Therefore, PG&E requests that the Commission modify Article 203 to reflect the fact that only 0.34 miles of Bardees Bar Road must be added to the project boundary.<sup>21</sup>

14. In the final EA, Commission staff recommended that the portion of Bardees Bar Road located on PG&E land be included in the project boundary because Bardees Bar Road terminates at Bardees Bar, which is also recommended for inclusion in the project boundary, and it would be appropriate to include a portion of the access road in the project boundary as well.<sup>22</sup> However, the final EA also stated that Commission staff did not recommend including all of Bardees Bar Road in the project boundary because it is also used for Union Pacific Railroad operations and to access private dwellings, as well as National Forest Service land, and is used only incidentally for project purposes.<sup>23</sup>

15. In its license application, PG&E submitted Exhibits G-3 and G-4, which demonstrate that only 0.34 miles of Bardees Bar Road is located on property owned by PG&E. Consistent with the recommendations in the final EA, we will modify Article 203 to only include 0.34 miles of Bardees Bar Road within the project boundary.

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<sup>19</sup> PG&E Request for Rehearing at 11 (citing Final EA at 255-256).

<sup>20</sup> *Id.* at 12.

<sup>21</sup> *Id.*

<sup>22</sup> Final EA at 255-256.

<sup>23</sup> *Id.* at 256.

However, we reserve the right to require PG&E to acquire additional portions of the road should it prove necessary to ensure access to project works and facilities.

**C. Article 203 – Bardees Bar Trail**

16. PG&E states that Article 203 requires it to add Bardees Bar Trail to the Exhibit G project boundary maps.<sup>24</sup> However, PG&E asserts that in the final EA, Commission staff did not recommend the development of Bardees Bar Trail and the License Order similarly does not require developing this trail.<sup>25</sup> PG&E states that the final EA recommended that PG&E conduct a feasibility study on improving a 2.8-mile-long trail downstream of Bardees Bar and comparing those results to the feasibility report filed by PG&E in 2006 that described developing an all-weather hiking trail upstream of Bardees Bar.<sup>26</sup> PG&E notes that the final EA did not recommend developing either of these trails or recommend either be included in the project boundary because of the limited information available at the time.<sup>27</sup> Therefore, PG&E requests that the Commission remove the reference to Bardees Bar Trail in Article 203.<sup>28</sup>

17. Similarly, American Whitewater states that the License Order fails to define the Bardees Bar Trail or specify PG&E's obligations with respect to the trail.<sup>29</sup> American Whitewater notes that the final EA found that new hiking opportunities within the project area are needed to meet recreation demand and recommended conducting a feasibility study on improving the trail between Bardees Bar and the Poe powerhouse.<sup>30</sup> American Whitewater further notes that the final EA recommended that PG&E develop an all-weather hiking trail if feasible, but that the License Order does not reference or incorporate the final EA's analysis or recommendations.<sup>31</sup> American Whitewater asserts that the FPA requires that terms and conditions of licensing be stated in the License

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<sup>24</sup> PG&E Request for Rehearing at 12.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* (citing Final EA at 249-251).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> American Whitewater Request for Rehearing at 4.

<sup>30</sup> *Id.* at 4-5 (citing Final EA at 249-251).

<sup>31</sup> American Whitewater Request for Rehearing at 5.

Order itself, and requests that the Commission expressly require PG&E to develop a hiking trail in the project area near Bardees Bar following the feasibility study as recommended in the final EA.<sup>32</sup>

18. We agree that Article 203 of the license should be modified to remove the reference to Bardees Bar Trail. The final EA did not recommend the construction of a new trail in the area of Bardees Bar.<sup>33</sup> Rather, the EA recommended that PG&E conduct a feasibility study on improving the trail between Bardees Bar and the Poe powerhouse road and comparing the results of this new study with the information provided by PG&E on modifying an abandoned construction road for use as a trail.<sup>34</sup> The final EA went on to recommend developing an all-weather hiking trail in one of these locations, if feasible.<sup>35</sup>

19. Although we are removing the requirement to include Bardees Bar Trail within the project boundary at this time, we also agree with the recommendation in the final EA that PG&E should conduct a feasibility study on improving the trail between Bardees Bar and the Poe powerhouse road. Additionally, depending on the results of the study, we may also require PG&E to develop an all-weather hiking trail.

#### **D. Capacity**

20. PG&E asserts that the License Order incorrectly describes the project as having a capacity of 143 megawatts (MW), the installed generator capacity.<sup>36</sup> PG&E asserts that the turbine capacity of the project is only 114 MW, and, under the Commission's regulations, the authorized installed capacity of a project means the lesser of the ratings of the generator or turbine units.<sup>37</sup> Therefore, PG&E requests the Commission modify the license order to reflect the authorized installed capacity of the project as being 114 MW.<sup>38</sup>

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<sup>32</sup> *Id.* at 5-6 (citing *Clifton Power Corp. v. FERC*, 88 F.3d 1258, 1261-62 (1996)).

<sup>33</sup> Final EA at 252.

<sup>34</sup> Final EA at 249.

<sup>35</sup> Final EA at 249-251.

<sup>36</sup> PG&E Request for Rehearing at 13.

<sup>37</sup> *Id.* (citing 18 C.F.R. § 11.1 (2018)).

<sup>38</sup> *Id.*



21. Under the Commission’s regulations, the authorized installed capacity of a project is “the lesser of the ratings of the generator or turbine units.”<sup>39</sup> Because the turbine capacity of the project is less than the generator capacity, the authorized installed capacity of the Poe Project is 114 MW.

**E. Article 401**

22. Last, PG&E requests that the Commission make two minor corrections to the first column in the table in Article 401(c) of the License Order. Specifically, PG&E states that the table misidentifies the water quality certificate condition number which corresponds to the license requirement.<sup>40</sup>

23. We agree that the water quality certificate condition numbers in Article 401(c) of the license are in error. Therefore, we correct the table to read:

WQC Condition No.	Forest Service Condition No.	License requirement
1	23 (Part 1)	Minimum flow releases
4	-	Notify California Fish and Wildlife, Forest Service, FWS, and Water Board prior to release of pulse flows.
2	23 (Part 1)	Notification of water year types
3	23 (Part 1)	Flow requirement modification due to multiple dry water years

The Commission orders:

- (A) PG&E’s January 15, 2019 request for rehearing is granted.
- (B) American Whitewater’s January 16, 2019 request for rehearing is granted.
- (C) The following corrections and revisions are made to the December 17, 2018 License Order:

- (1) This license is issued to Pacific Gas and Electric Company (licensee) for a period of 50 years, effective on the first day of the month in

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<sup>39</sup> 18 C.F.R. § 11.1 (2018).

<sup>40</sup> PG&E Request for Rehearing at 13-14.

which the License Order is issued to operate and maintain the Poe Hydroelectric Project No. 2107. This license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

- (2) The authorized installed capacity of the Poe Project is 114 MW.
- (3) Article 203 is revised to read:

Article 203. Exhibit G Drawing. Within 90 days of license issuance, the licensee must file with the Commission for approval, revised Exhibit G drawings that show the following facilities added to the project boundary: (1) Big Bend Dam and reservoir (up to the current project boundary downstream of the powerhouse tailrace); (2) the recreation enhancements to be made at Sandy Beach, Bardees Bar, and Poe Beach; and (3) the last 0.34 miles of Bardees Bar Road located on PG&E property. The licensee must also update the drawings to comply with sections 4.39 and 4.41(h) of the Commission's current regulations.

- (4) Article 401(c) is revised to read:

*Requirement to Notify Commission of Planned and Unplanned Deviations from License Requirements*

Three Water Board conditions in Appendix A and three Forest Service conditions in Appendix B would allow the licensee to temporarily modify project operations under certain conditions. The Commission must be notified prior to implementing such modifications, if possible, or in the event of an emergency, as soon as possible, but no later than 10 days after each such incident. The California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service must also be notified prior to implementing any modifications to minimum flows required by certification condition no. 1 and Forest Service condition no. 23 (Part 1).

WQC Condition No.	Forest Service Condition No.	License requirement
1	23 (Part 1)	Minimum flow releases
4	-	Notify California Fish and Wildlife, Forest Service, FWS, and Water Board prior to release of pulse flows.
2	23 (Part 1)	Notification of water year types
3	23 (Part 1)	Flow requirement modification due to multiple dry water years

(5) Article 407 is added to the license and states:

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.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.