

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

Pacific Gas and Electric Company) Docket No. P-77-332
Potter Valley Project)

**ELSINORE VALLEY MUNICIPAL WATER DISTRICT'S
RENEWED MOTION FOR LATE INTERVENTION**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.214, the Elsinore Valley Municipal Water District (EVMWD) respectfully submits this Renewed Motion for Late Intervention in the above-captioned proceeding.¹

COMMUNICATIONS

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¹ On July 27, 2026, the Commission Secretary issued an order denying EVMWD's initial motion to intervene late for failure to show good cause. Concurrently, EVMWD has filed a Petition for Rehearing of that order. EVMWD submits this Renewed Motion as an alternative procedural vehicle to supplement the administrative record, directly address the informational deficiencies alleged by the Secretary, and demonstrate that compelling good cause and extraordinary circumstances justify EVMWD's participation in this proceeding.

DESCRIPTION AND INTEREST OF MOVANT

EVMWD is a municipal water district responsible for securing a reliable, affordable water supply for 168,000 customers in Southern California. Although geographically distant from the Potter Valley Project's physical footprint, EVMWD is inextricably linked to the project's operational output through California's interconnected, zero-sum water distribution system. Any reduction or systemic timing gap in northern water diversions or supplies directly depletes the aggregate availability of the state's water supply, forcing severe shifts in supply procurement that would increase rates for EVMWD's captive customers. EVMWD's unique interest is to protect its customers from these statistically certain financial and operational harms.

EVMWD has actively sought to protect its customers and mitigate these supply risks. To that end, EVMWD has explored and discussed with its Board members the potential acquisition, funding, or operation of a portion of the existing project dams to preserve water security. In California, public water agencies set water rates through a public Proposition 218 rate-setting process. This process involves a comprehensive study that identifies all related costs and expenses (capital, operations, maintenance, administrative, and other costs) and determines a fair and equitable rate for water users based on a myriad of factors, including, but not limited to, the amount, quality, and delivery costs. Because much of this is unknown to both EVMWD and the Eel Russian Project Authority (ERPA, part of the Two Basin Agreement contained in Pacific Gas and Electric Company's ("PG&E") surrender application), it is premature to conduct a Proposition 218 rate-setting study.

Any public entity that acquires the facilities or builds additional facilities would be required to do so, and all parties must understand this, especially given the lack of information and clarity from PG&E and the stakeholder proponents of the Two Basin Agreement.

Consequently, EVMWD must rely solely on the regulatory protections established in this FERC proceeding. EVMWD's interest in avoiding significant customer impacts is direct and substantial and cannot be adequately represented by any other party.

BACKGROUND AND PROCEDURAL HISTORY

PG&E has owned and operated the Potter Valley Project for more than sixty years. Beyond its nominal hydropower capacity, the Project has been an indispensable part of the regional water infrastructure, providing critical water storage, inter-basin transfers, and a stable water supply across California.

On July 25, 2025, PG&E filed an application with the Commission to surrender and decommission the Potter Valley Hydroelectric Project No. 77. The project is located on the Eel River and the East Branch of the Russian River in Lake and Mendocino counties. It occupies federal lands managed by the U.S. Forest Service. On October 31, 2025, the Commission issued a public notice regarding PG&E's application to surrender its license and decommission the project, including the proposed physical removal of the project's dams.

On July 8, 2026, EVMWD filed a Motion to Intervene Late in this FERC proceeding. The Round Valley Indian Tribes and conservation groups subsequently filed oppositions to EVMWD's motion. On July 27, 2026, the Commission Secretary, acting under delegated authority, issued a notice denying EVMWD's late intervention, stating that EVMWD "did not provide any explanation for the untimeliness of its motion."

Although EVMWD included a comment explaining why it was late in seeking intervention in this proceeding² it has now amended its motion to more fully explain how preparing for and participating in the Commission's NEPA process prompted its late intervention.

EVMWD now files this Renewed Motion concurrently with a Petition for Rehearing of the Secretary's July 27, 2026, Notice Denying Late Intervention, to establish good cause based on expanded facts and regulatory developments.³

1. EVMWD Has Good Cause for its Late Intervention.

EVMWD does not contend merely that it was unaware of PG&E's surrender application. Rather, the circumstances giving rise to EVMWD's substantial and particularized government interests became apparent during the first NEPA scoping session in June 2026, when it conferred with other stakeholders and learned of potential water-security infirmities in the so-called Two Basin Agreement, which was negotiated by PG&E and other local stakeholders and included in the surrender application.

The Potter Valley Project is geographically remote from EVMWD's Southern California service territory. The October 31, 2025 public notice of a hydroelectric surrender proceeding involving facilities hundreds of miles away did not immediately raise concerns about a proceeding that would later materially affect water supply interests and governmental responsibilities statewide.

² On page 4 of its July 8, 2026 motion, EVMWD explained that *[f]ollowing the recent FERC National Environmental Policy Act (NEPA) scoping sessions on June 23 and 24, 2026, in Ukiah, California, in which representatives of EVMWD participated, its concerns were heightened upon meeting with other stakeholders in the instant proceeding.* During this time, EVMWD learned of the water security infirmities with the proposed New Eel Russian Facility (NERF), which was offered to address water supply insufficiencies resulting from removing project dams.

³ See also, note 1, *supra*.

It now appears this proceeding could set a powerful FERC precedent, signaling to private utilities that they may walk away from aging infrastructure, even if doing so severely impacts regional water security. As the Two Basin Agreement's facts are more fully analyzed, it has become clearer that its primary objective is ecological restoration, not water storage security. Its implementation could fundamentally alter the mechanics of regional water management, creating a cascading effect that directly affects statewide water conditions across California.

This case differs from one in which a party knowingly ignores proceedings, waits for a dispositive Commission order, and then attempts to intervene because it disagrees with the result. EVMWD does not seek to reopen completed proceedings, repeat completed procedural steps, postpone an established hearing, or extend existing deadlines solely to accommodate its participation. EVMWD expects to enter the proceeding in its present posture, accept the existing administrative record, comply with all existing schedules, refrain from duplicative discovery, and accept reasonable limitations necessary to prevent prejudice. Rule 214 expressly authorizes the Commission to impose such limitations.

The surrender proceeding remains ongoing, and the environmental review is underway. No party has shown that EVMWD's participation would require reopening a final Commission determination or materially disrupt the proceeding.

2. The Commission has Broad Flexible Equity Under Rule 214(d) to Consider Holistic Context of Late Filings.

Only three days before the Secretary's July 27 denial, the U.S. Court of Appeals for the D.C. Circuit decided *American Whitewater v. FERC*, No. 25-1092, 2026 WL 2132395 (D.C. Cir. July 24, 2026), vacating FERC's denial of late intervention for failing to adequately reconcile its treatment of American Whitewater with contrary Commission precedent.

American Whitewater arose from another FERC hydroelectric license-surrender proceeding. *American Whitewater*, 2026 WL 2132395 at *1–2. *American Whitewater* sought to intervene after the intervention deadline had passed. *Id.* at *1. FERC denied intervention because the movant failed to show good cause for its untimeliness and later affirmed that determination on rehearing. *See id.* at *3. The D.C. Circuit vacated FERC’s decision. *Id.* at *12.

The court did not hold that Rule 214’s good-cause requirement is meaningless. Rather, it held that FERC may not apply that requirement inconsistently with its own precedent without providing a reasoned explanation for the difference in treatment. *Id.* at *1 (“But Petitioner has shown that the Commission acted arbitrarily and capriciously in denying rehearing by inconsistently applying its precedent on late intervention without a reasoned explanation, contrary to a fundamental principle of administrative law that agencies must treat similarly situated parties similarly.”). The court identified multiple Commission decisions in which FERC granted late intervention despite deficient or minimal treatment of the good-cause requirement. It concluded that FERC failed to adequately explain why it treated *American Whitewater* differently. *Id.* at *8–9.

EVMWD acknowledges that its original motion could have more fully articulated the good cause supporting its untimely filing. But that pleading deficiency does not compel denial as a matter of law. *American Whitewater* demonstrates that FERC itself has not historically treated a deficient good-cause showing as an invariably dispositive jurisdictional bar. At a minimum, the Commission must reconcile EVMWD’s treatment with the contrary Commission precedents identified in *American Whitewater*.

In addition, the Commission has consistently recognized that granting an out-of-time intervention while the environmental review record remains fluid does not disrupt the proceeding

or prejudice existing parties. *See, e.g., Transcontinental Gas Pipe Line Co.*, 182 FERC ¶ 61,006 (2023), and *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 (2017) (granting interventions filed months out of time because a final merits order had not yet been entered). Because the instant proceeding is actively within an expanded second NEPA scoping session, the environmental record is explicitly open, effectively eliminating the institutional burden of granting intervention.

3. The Continuing NEPA Process Further Demonstrates the Absence of Procedural Prejudice.

The NEPA environmental review for this surrender application is entirely incomplete. In particular, EVMWD was not fully aware that the decommissioning timeline would include critical gaps in water supply timing.⁴

Commission staff has requested additional comments on PG&E's surrender application due to numerous concerns about flaws in the Two Basin Agreement included in the application. The Commission staff conducting the current NEPA process are taking a closer look at the water supply and security mechanisms in that Agreement. It is reasonable to assume that material changes will, at a minimum, be discussed. EVMWD wants to be fully informed about any potential material changes to ensure that Southern California's water supply is not adversely affected and that EVMWD's customers are not financially harmed.

⁴ It wasn't until FERC began its more in-depth review of PG&E's application in its NEPA process that EVMWD became aware, through discussions with stakeholders and comments filed by stakeholders, that there were serious doubts about the validity of the water supply and storage mechanisms (the creation of ERPA and the NERF) proposed in PG&E's surrender application. EVMWD now understands that the proposal creates an operational and regulatory gap in the timing of the state-considered storage replacement plan, which threatens regional water availability. EVMWD believes this to be a critical flaw in the application, prompting it to become a party in this proceeding.

The administrative process remains active. EVMWD seeks participation while its information can still contribute to the Commission's decision-making. Granting intervention can therefore advance, rather than frustrate, the development of a complete administrative record.

4. Allowing EVMWD to Comment Doesn't Cure Prejudice Resulting from Denial of Party Status.

Any suggestion that EVMWD suffers no meaningful prejudice because it remains free to submit public comments overlooks the legal distinction between a commenter and a party. Filing a comment does not confer party status in a Commission proceeding.

EVMWD seeks to protect governmental interests throughout the administrative process and to preserve procedural rights associated with party status, including those authorized by law, such as rehearing and judicial review. The right to comment does not place EVMWD in the same legal position as an intervenor.

5. The Commission's Public Interest Responsibility.

PG&E's application for surrender of license included a plan negotiated by local community organizations for the now publicly declared purpose of protecting the exclusive interests of the northern part of the State of California, not those of the rest of the State. EVMWD is not aware of any Southern California representatives involved in negotiating the Two Basin Agreement, which was ultimately incorporated into that application.

Some of the same parties to this proceeding who were intimately involved in negotiating the Two Basin Agreement have been the most determined opponents of late interventions. EVMWD understands why those opponents are vigorously opposing potential parties who may hold differing views on how best to protect California's limited water supply. However, given the evolving concerns arising from the Commission's review of the surrender application, EVMWD's interests are important as well.

EVMWD is under a strict statutory obligation to provide safe, reliable, and affordable drinking water under frameworks such as the federal *Safe Drinking Water Act*. If it fails, it faces serious consequences: civil lawsuits, state intervention, other legal charges, and political blowback. Many, if not all, of the opponents of EVMWD's intervention motion bear no statutory liability for utility failures. A non-governmental organization (NGO) conservation group faces no legal or financial penalties for successfully lobbying for water restrictions that inadvertently cause a water system's finances to collapse. They are insulated from the immediate political and economic blowback of local rate hikes.

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A Commission decision that accepts the PG&E surrender application in its current form, without modification, would compound an already existing water crisis. By showing that dam removal takes priority over traditional multi-basin water storage networks, FERC would severely hamper the mission of water managers in California and, perhaps, nationwide. As soon as this became clear, EVMWD acted promptly to protect governmental and public interests. It is in the public interest for EVMWD to participate in this proceeding. EVMWD's perspective as a Southern California municipal water district would help ensure that customers in Southern California do not suffer financial and operational harm.

CONCLUSION

As demonstrated herein, EVMWD's minor delay in filing resulted from a public notice that was vague about geographic impacts and from shifting factual circumstances that only crystallized during the Commission's NEPA process, which began in May 2026.

FERC has acknowledged that the original scope of the proceeding was insufficient by ordering a second public scoping session. By reopening or extending public scoping in response to substantial public input, FERC has officially signaled that the environmental issues are more complex than originally recognized. EVMWD's late intervention is a direct, logical response to FERC's timeline extension.

Because of the ongoing NEPA sessions, the existing parties are already preparing for an expanded environmental review, so EVMWD's entry does not require a sudden pivot or cause surprise. Once the NEPA process concludes and a final order is issued, EVMWD will be barred from filing a formal request for rehearing or seeking judicial review.

No other party represents EVMWD's specific local water rights or its unique economic stake in the infrastructure, leaving EVMWD's voice entirely absent from the ongoing NEPA debate.

Because EVMWD has a direct, unique, and statutory interest in the statewide water supply grid, which now appears will be altered by the decommissioning of the Potter Valley Project, and because its early participation will not disrupt the proceeding or prejudice any existing party, EVMWD respectfully requests that the Commission grant this motion and accord it full party status.

Respectfully submitted,

/s/ Curtis L. Hebert, Jr.

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ATTORNEYS FOR EVMWD

CERTIFICATE OF SERVICE

I hereby certify that the foregoing EVMWD Renewed Motion to Intervene Late has been filed this day in the above-captioned proceeding, with the Federal Energy Regulatory Commission and served upon each person designated on the Commission's service list in Project No. 77-332.

Dated at Jackson, MS this 26th day of August, 2026.

/s/ Curtis L. Hebert, Jr.

Curtis L. Hebert, Jr., Esq.