

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

In Re: Application for Surrender of License and
for Non-Project Use of Project Lands (Pacific
Gas & Electric Company; Potter Valley
Hydroelectric Project No. P-77)

FERC Project No. 77-332

**OPPOSITION TO INFRASTRUK GROUP LLC'S
MOTION FOR LATE INTERVENION
of
FRIENDS OF THE EEL RIVER, CALIFORNIA TROUT, AND TROUT UNLIMITED**

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Friends of the Eel River, California Trout, and Trout Unlimited respectfully oppose the Motion for Late Intervention (“Late Motion”) filed by Infrastruk Group LLC (“Infrastruk”).¹

Infrastruk states that it “seeks intervention for the specific purpose of presenting, developing, and preserving for Commission consideration a fundamentally different alternative: CONTINUED OPERATION AND SUCCESSOR LICENSEE.” (ALL CAPS in original.) The time for potential successor licensees other than PG&E to submit a Notice of Intent to pursue a license was 2019. Infrastruk has presented no information to support its late intervention on the current proceeding, which is for license surrender. Allowing it to present the extremely untimely and speculative hypothesis that it can help find a successor licensee would be disruptive and prejudicial to other parties. Infrastruk’s motion thus fails to meet the standards for late intervention under 18 C.F.R. § 385.214 (“Rule 214”) and should be denied.

Background

Pacific Gas & Electric Company (“PG&E”) filed its Final Applications for Surrender of License and for Non-Project Use of Project Lands (collectively “License Surrender Application” or “LSA”) for the Potter Valley Hydroelectric Project, FERC Project No. 77 (the “Project”) on July 25, 2025.²

On October 31, 2025, the Commission issued a Notice of Application for Surrender of License and Non-Project Use of Public Lands soliciting motions to intervene in the LSA

¹ Infrastruk Group LLC, Motion for Late Intervention, Project No. P-77-332 (July 23, 2026), Doc. Accession No. 20260723-5046.

² PG&E, Final Application for Surrender of License; Final Application for Non-Project Use of Public Lands, Project No. P-77 (July 25, 2025), Doc. Accession No. 20250725-5175.

proceeding.³ The notice established a deadline of December 1, 2025 for “comments, motions to intervene, and protests.”⁴ On December 1, 2025, FERC issued a further notice extending the “deadline for filing comments, interventions, and protests” to December 19, 2025.⁵

Infrastruk’s motion reads as if the company thinks this was the start of the discussion. It makes no mention of the many years of work by PG&E, FERC, and other parties bringing us to this point.⁶ On April 6, 2017, PG&E filed a Notice of Intent (NOI) and Pre-Application Document (PAD) to relicense the Potter Valley Project. PG&E’s final license application and any competing applications were due on April 14, 2020. On January 25, 2019, PG&E withdrew its NOI and PAD, stating that it no longer intended to relicense the project, resulting in the Potter Valley Project becoming an “orphaned project” subject to section 16.25 of the Commission’s regulations.⁷ On March 1, 2019, pursuant to section 16.25(a),⁸ the Commission issued a notice establishing a July 1, 2019 deadline for interested applicants, other than PG&E, to file NOIs, PADs, and requests to complete the remaining pre-filing stages of the licensing process.⁹ At that

³ FERC, Notice of Application for Surrender of License and Non-Project Use of Public Lands, Accepted for Filing, Soliciting Comments, Motions to Intervene, and Protests, Project No. P-77-332 (Oct. 31, 2025), Doc. Accession No. 20251031-3044.

⁴ *Id.* at 2.

⁵ FERC, Notice Extending Comment Period, Project No. 77-332 (Dec. 1, 2025), Doc. Accession No. 20251201-3070.

⁶ For the timeline *see* FERC, Notice of Scoping Meetings and Request for Comments on Proposed Surrender, Decommissioning, and Non-Project Use of Project Lands” (May 22, 2026) (Scoping Notice), Doc. Accession No. 20260522-3069.

⁷ 18 C.F.R. § 16.25 (2021).

⁸ *Id.* (requiring the Commission to publish a notice soliciting applications from potential applicants other than the existing licensee when a project becomes orphaned).

⁹ *Notice Soliciting Applications*, 84 Fed. Reg. 8324 (March 1, 2019) (Notice of Orphan Project), at Doc. Accession No. 20190301-3038.

time, any potential hydropower operator in America that wanted to take over the Project had an opportunity to assess its merits.

The July 2019 deadline for an NOI and PAD passed. PG&E's license expired on April 14, 2022. Applications by potential licensees other than PG&E would have been due that same day, but none were submitted.¹⁰ Later that year, the Commission dismissed a purported license application to take over the Project submitted by a company calling itself PVP 77 LLC because, among other things, it never submitted an NOI and PAD by the 2019 deadline and it failed to submit a legitimate license application by the 2022 deadline.¹¹

FERC then directed PG&E to pursue license surrender, and the utility has done so.

Argument

I. Infrastruk has not met the Commission's requirements for intervention.

All motions to intervene—timely or otherwise—must satisfy two basic requirements. First, motions must “state, to the extent known, the position taken by the movant and the basis in fact and law for that position.” 18 C.F.R. § 385.214(b)(1). Second, motions must “state the movant’s interest in sufficient factual detail” to demonstrate that the movant has a statutory or other right to participate, that the movant has an interest “directly affected by the outcome of the proceeding,” or that the movant’s participation is in the public interest. 18 C.F.R. § 385.214(b)(2).

¹⁰ A group that included most of the sponsors of the present Two-Basin Solution and New Eel-Russian Facility, which is positioned to become the successor in interest to PG&E's diversion tunnel, did submit an NOI. That group explored the potential to take over the license, but determined it infeasible.

¹¹ See *PVP 77 LLC* 180 FERC ¶ 61,007 (July 5, 2022) (denying as untimely and deficient a purported license application to take over the Project).

The Late Motion fails to demonstrate that Infrastruk “has or represents an interest which may be directly affected by the outcome of the proceeding.” 18 C.F.R. § 385.214(b)(2)(ii). Its only stated interest is in developing a proposal for a hypothetical entity to become a successor licensee, which is not only speculative but legally impossible at this late stage.¹² Therefore, Infrastruk has failed to articulate a cognizable interest in the surrender application.

As an alternative to demonstrating an interest “which may be directly affected,” a movant may instead state its interest “in sufficient factual detail” to demonstrate its participation “is in the public interest.” 18 C.F.R. § 385.214(b)(2)(iii). The Late Motion fails to make this demonstration. Instead, Infrastruk’s only stated purpose is to make speculative, untimely, and legally precluded comments about finding a successor licensee. Such participation cannot be in the public interest. To the contrary, it would greatly disrupt the proceeding, as described below.

II. Infrastruk has not shown good cause why the time limitation should be waived.

An untimely motion to intervene must show “good cause why the time limitation should be waived.” 18 C.F.R. § 385.214(b)(3). The Commission may consider a number of factors in acting on a late motion, including whether the movant had good cause for failing to file a timely motion, whether intervention would disrupt the proceeding, whether the movant’s interest is adequately represented by other parties, whether the movant’s participation would place additional burdens on or cause prejudice to other parties, and whether the motion conforms to the basic intervention motion standards in Rule 214(b). 18 C.F.R. § 385.214(d)(1)(i)-(v).

¹² See 18 C.F.R. § 16.26(a).

The Rule 214(d)(1) factors weigh against allowing late intervention here.

A. Infrastruk has not shown good cause for being months late.

The Commission “may consider” whether movant “had good cause for failing to file the motion within the time prescribed.” 18 C.F.R. § 385.214(d)(1)(i). Infrastruk claims that Scoping Document 1 is new information and creates a “distinct procedural opportunity” that arose after the intervention deadline. This is nonsense. PG&E’s intent was clear with its submitted license surrender application. The scoping document always follows the notice of application and opportunity for interventions; it is not another procedural opportunity to restart the deadline. In any case, the deadline for filing a NOI and PAD was back in 2019, and the last opportunity for another application to take over the license passed in 2022.

B. Infrastruk’s participation will disrupt the proceeding and prejudice existing parties.

The Commission should consider whether granting the Late Motion will disrupt the proceeding and prejudice existing parties. 18 C.F.R. § 385.214(d)(1)(ii), (iv). The Commission should deny the Late Motion on these grounds.

Infrastruk is very clear in its purpose: it “seeks intervention for the specific purpose of presenting, developing, and preserving for Commission consideration a fundamentally different alternative: CONTINUED OPERATION AND SUCCESSOR LICENSEE.” As discussed, the time for this possibility has long since passed. Any attempt to argue otherwise or reopen the orphan process would be disruptive and prejudicial, forcing FERC staff, PG&E, and numerous other legitimate intervening parties to spend time and money responding to an untimely and impossible demand.

Moreover, it would be disruptive and potentially prejudicial to the existing entities preparing to maintain a water diversion after license surrender. Specifically, numerous parties to

this proceeding—including water agencies on the Russian River side of the Project diversion, local governments, Tribes, and conservation groups (California Trout and Trout Unlimited) have worked with PG&E regarding the non-project use of Project lands for a continued diversion facility.¹³ The parties to that agreement created the Eel-River Project Authority to design, permit, and build upgrades to the diversion works concurrently with decommissioning. ERPA has invested considerable sums on engineering and design and has already committed roughly \$10 million toward completion. ERPA and the other Two Basin Solution partners have strong reliance interests in seeing it carried out—interests that would be disrupted by Infrastruck’s tardy efforts to find a third party to acquire the license or otherwise delay the proceeding.¹⁴ That agreement is reflected in PG&E’s LSA, which represents the licensee’s desired outcome for disposition of the Project. The Commission cannot deny PG&E’s surrender application or compel PG&E to keep operating the Project against its wishes.¹⁵ Nor has movant—or anyone else—ever articulated any legally, financially, or physically plausible path for a hypothetical third party to acquire the license or operate the Project, even though they had many years to do so. Indeed, the local parties with the greatest interest and expertise explored the possibility and ruled it out.

¹³ See Motion to Intervene and Comments by Eel-Russian Project Authority, et al., Project No. P-77-332 (Dec. 1, 2025), Doc. Accession No. 20251201-5544, at 4-6; Joint Motion to Intervene and Comments of California Trout and Trout Unlimited, Project No. P-77-332 (Dec. 1, 2025), Doc. Accession No. 20251201-5486, at 9-10.

¹⁴ Cf. *Maritimes & Ne. Pipeline, L.L.C.* (2016) 154 FERC ¶ 61,182 at P 37 (denying late intervention that would cause prejudice to settling parties).

¹⁵ See *FPL Energy Maine Hydro, LLC* (2004) 107 FERC ¶ 61,120, 61,404 (May 6, 2004), *aff’d sub nom Save our Sebasticook v. FERC*, 431 F.3d 379 (D.C. Cir. 2005); see also *FPL Energy*, 106 FERC ¶ 61,038, 61,143.

Infrastruk's participation in this proceeding—even though futile—is therefore highly likely to be disruptive and prejudicial to the other parties who have invested considerable time and effort and worked in good faith to find a resolution to decades-long disputes over this Project.

C. The Late Motion does not conform to the requirements of Rule 214(b).

Rule 214(d)(1)(v) provides for consideration of whether the Late Motion is in conformity with Rule 214(b). As explained in Section I, above, the Late Motion is not.

Conclusion

For the foregoing reasons, Friends of the Eel River, California Trout, and Trout Unlimited respectfully request that the Late Motion be denied.

Respectfully submitted,

DATED: July 30, 2026

By: /s/ Alicia Hamann
ALICIA HAMANN
FRIENDS OF THE EEL RIVER

DATED: July 30, 2026

By: /s/ Walter "Redgie" Collins
WALTER "REDGIE" COLLINS
CALIFORNIA TROUT

DATED: July 30, 2026

By: /s/ Matt Clifford
MATT CLIFFORD
TROUT UNLIMITED

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas & Electric Company
Potter Valley Project

Project No. P-77-332

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, by first class mail or electronic mail, the Opposition to Infrastruk Group LLC's Motion for Late Intervention by Friends of the Eel River, California Trout, and Trout Unlimited regarding PG&E's proposed license surrender and decommissioning of the Potter Valley Hydroelectric Project, P-77-332. This Certificate of Service is served upon each person designated on the official P-77-000 Service List compiled by the Commission in the above-captioned proceedings.

Dated this 30th day of July, 2026.



David Weibel
Legal Secretary
Shute, Mihaly & Weinberger LLP