

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company Potter Valley Hydroelectric Project	Project No. P-77-332
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**REQUEST OF INFRASTRUK GROUP LLC FOR REHEARING
OF AUGUST 12, 2026 NOTICE DENYING LATE INTERVENTION**

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Pursuant to section 313(a) of the Federal Power Act ("FPA"), 16 U.S.C. § 825l(a), and Rule 713 of the Federal Energy Regulatory Commission's ("Commission" or "FERC") Rules of Practice and Procedure, 18 C.F.R. § 385.713, Infrastruk Group LLC ("Infrastruk") **respectfully requests rehearing by the Commission** of the August 12, 2026, Notice Denying Late Intervention, Accession No. 20260812-3135 ("August 12 Notice" or "Notice"). The Notice expressly states that it constitutes **final agency action** and that **rehearing by the Commission** may be requested under FPA section 313(a) and Rule 713.

Infrastruk seeks rehearing of the denial of its July 23, 2026, Motion for Late Intervention, Accession No. 20260723-5046 ("Motion"). This Request is timely if filed no later than September 11, 2026. This Request does not ask the Commission, through rehearing of the intervention ruling, to issue Infrastruk a hydroelectric license, revive an expired licensing deadline, compel Pacific Gas and Electric Company ("PG&E") to continue operating the Potter Valley Project, determine that Infrastruk is entitled to succeed PG&E as licensee, or prejudge the legal or technical viability of any particular alternative. The immediate issue is narrower: whether Infrastruk should be permitted to participate prospectively as a party in the still-pending surrender, decommissioning, non-project-use, and environmental-review proceeding while the Commission evaluates the proposed action and **reasonable alternatives**.

The most important intervening authority is *American Whitewater v. FERC*, decided on July 24, 2026 - one day after Infrastruk filed its Motion and nineteen days before the August 12 Notice. *American Whitewater* also involved Rule 214 and a hydroelectric-license surrender proceeding. The D.C. Circuit held that FERC acted arbitrarily and capriciously by inconsistently applying its late-intervention precedent without a reasoned explanation, while also recognizing that the Commission may deny late intervention for lack of good cause without mechanically reaching every Rule 214(d)(1) factor.

STATEMENT OF ISSUES

Pursuant to Rule 713(c)(2), Infrastruk separately enumerates the following issues. Each issue is intended to give the Commission a full opportunity to address the asserted error and to preserve the issue to the fullest extent authorized by FPA section 313.1

¹ 18 C.F.R. § 385.713(c)(2) (2026) (requiring a separate Statement of Issues and providing that an issue not listed is deemed waived).

Issue 1 - Failure to Address American Whitewater

Whether the August 12 Notice is arbitrary, capricious, an abuse of discretion, inadequately reasoned, or otherwise contrary to law because it denied Infrastruk's late-intervention motion without addressing American Whitewater, an intervening appellate decision involving Rule 214 and a hydroelectric-license surrender proceeding that vacated Commission orders for inconsistent application of Commission late-intervention precedent without reasoned explanation.

Authorities: *American Whitewater v. FERC*, No. 25-1092 (D.C. Cir. July 24, 2026); *West Deptford Energy, LLC v. FERC*, 766 F.3d 10, 17, 20 (D.C. Cir. 2014); *Westar Energy, Inc. v. FERC*, 473 F.3d 1239, 1241 (D.C. Cir. 2007).

Issue 2 - Inconsistent Application of Rule 214 Precedent

Whether the Notice impermissibly treated constructive notice plus failure timely to intervene as dispositive without explaining why Infrastruk should be treated differently from late intervenors whom the Commission has permitted to intervene notwithstanding substantial delay or where the Commission considered other Rule 214 factors.

Authorities: *American Whitewater*; *Northern Natural Gas Co.*, 175 FERC ¶ 61,052 (2021); *Broadview Solar, LLC*, 175 FERC ¶ 61,228, PP 9-10 (2021); *Transcontinental Gas Pipe Line Co.*, 182 FERC ¶ 61,006, PP 11, 86 (2023).

Issue 3 - Failure to Distinguish California Trout

Whether the Notice's reliance on California Trout is incomplete because American Whitewater expressly held that reliance on California Trout did not answer the separate inconsistent-precedent argument and because the factual circumstances surrounding Infrastruk's response to the 2026 scoping process differ from the prolonged delay addressed there.

Authorities: *California Trout v. FERC*, 572 F.3d 1003, 1022-26 (9th Cir. 2009); *American Whitewater*, slip op. at 21-22.

Issue 4 - Mischaracterization of the May 22, 2026 Development

Whether the Notice erred by deciding merely that the May 22 Scoping Notice did not establish a new intervention deadline instead of addressing whether the subsequent alternatives-focused NEPA process materially clarified or developed issues and interests supporting good cause for late intervention.

Authorities: 18 C.F.R. § 385.214(b)(3), (d); *Broadview Solar, LLC*, 175 FERC ¶ 61,228, PP 9-10; *Erie Boulevard Hydropower, L.P.*, 188 FERC ¶ 61,057, P 11 (2024).

Issue 5 - Failure to Address Procedural Posture

Whether the Commission adequately considered that Infrastruk moved before any dispositive surrender order, while the environmental review and alternatives analysis remained open and FERC was actively soliciting scoping comments, including for reasonable alternatives.

Authorities: 18 C.F.R. § 385.214(d); *Tennessee Gas Pipeline Co.*, 162 FERC ¶ 61,167, P 10 (2018); *Broadview Solar, LLC*, 174 FERC ¶ 61,199, P 14 (2021); *Ampersand Christine Falls Hydro, LLC*, 194 FERC ¶ 61,048, P 8 (2026).

Issue 6 - Failure to Address Limited Prospective Intervention

Whether complete denial of party status was inadequately reasoned where Rule 214(d)(2) prevents late intervention from delaying an existing schedule, Rule 214(d)(3) permits restrictions to avoid delay and prejudice, and Infrastruk expressly offered to accept those limitations.

Authorities: 18 C.F.R. § 385.214(d)(2)-(3); *American Whitewater*; *Swanson Mining Corp. v. FERC*, 790 F.2d 96, 105 (D.C. Cir. 1986).

Issue 7 - Failure to Address Infrastruk's No-Delay Commitments

Whether the Commission adequately considered Infrastruk's representations that it would accept the existing record, would not reopen completed stages merely because intervention was granted, and would participate prospectively subject to the existing schedule.

Authorities: 18 C.F.R. § 385.214(d)(1)(ii), (iv), (2), (3); *State Farm*, 463 U.S. at 43, 50.

Issue 8 - Failure to Distinguish Intervention from Licensing Relief

Whether the Notice adequately considered the distinction repeatedly presented by Infrastruk between obtaining procedural party status in the surrender proceeding and obtaining substantive relief in the form of a successor license, license transfer, continued-operation authorization, or other approval.

Authorities: 18 C.F.R. § 385.214; 16 U.S.C. §§ 797, 799, 808, 825l.

Issue 9 - Failure to Address Infrastruk's Distinct Interest

Whether the Commission adequately considered Infrastruk's asserted interest in engineering, water-supply, agriculture, energy, infrastructure, environmental, economic, and continued-operation alternatives, especially as protected by the Executive Orders of the President, agency department chief administrators carrying out those Executive Order, and whether those interests are adequately represented by parties advocating materially different outcomes.

Authorities: 18 C.F.R. § 385.214(b)(2), (d)(1)(iii); *Swanson Mining*, 790 F.2d at 105.

Issue 10 - Failure to Reconcile Consideration of Comments with Denial of Party Status

Whether the Commission adequately explained why it will consider Infrastruk's July 23 comments while completely denying prospective party status and the procedural protections associated with party status.

Authorities: 18 C.F.R. § 385.214; 16 U.S.C. § 825l; *American Whitewater*, slip op. at 10-12, 25-26.

Issue 11 - Failure to Address the July 24 Scoping Extension

Whether the Commission adequately considered that, one day after Infrastruk filed its Motion, FERC extended the scoping-comment period through September 18, 2026, demonstrating that environmental scoping remained open when Infrastruk sought intervention and when the August 12 Notice issued.

Authorities: 18 C.F.R. § 385.214(d); *American Whitewater*; *State Farm*, 463 U.S. at 43, 50.

Issue 12 - Reasoned Decisionmaking

Whether the Notice satisfies the FPA and APA where its dispositive reasoning did not address *American Whitewater*, inconsistent Commission precedent, the July 24 extension, Infrastruk's no-

delay commitments, limited intervention, or the distinction between party status and ultimate licensing relief.

Authorities: 5 U.S.C. § 706(2)(A); 16 U.S.C. § 825l(b); *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021); *State Farm*, 463 U.S. at 43, 50.

Issue 13 - Preservation of Administrative and Judicial Review

Whether denial warrants rehearing where party status materially affects Infrastruk's ability to protect its asserted interests through rehearing and judicial review of subsequent final Commission actions.

Authorities: 16 U.S.C. § 825l(a)-(b); *American Whitewater*, slip op. at 10-12, 25-26.

I. INTRODUCTION

The Notice presents a narrow rationale for denying party status in a proceeding that remains substantively active. It acknowledges that Infrastruk relied on the Commission's May 22, 2026, scoping process, which Infrastruk characterized as materially changing and clarifying the issues, and it acknowledges Infrastruk's asserted interest in evaluating and developing a reasonable alternative to decommissioning. Yet the Notice concludes that because the May 22 Scoping Notice did not establish a new intervention deadline, and because a person with actual or constructive notice who fails timely to intervene ordinarily lacks good cause, Infrastruk did not demonstrate good cause.²

That reasoning does not fully address the Motion actually presented. Infrastruk does not need a categorical ruling that every NEPA scoping notice creates a new Rule 214 deadline. The narrower question is whether the specific 2026 scoping process - including FERC's express solicitation of reasonable alternatives and technical information - was a material subsequent procedural development relevant to good cause, procedural disruption, and the appropriateness of limited prospective intervention.

American Whitewater now requires that question to be considered against the Commission's actual pattern of Rule 214 decisions. The Commission retains substantial discretion, but it must articulate a reasoned basis if it treats materially similar late-intervention situations differently.³

A further national-policy consideration reinforces the need for Commission-level rehearing. Executive Order 14363 of November 24, 2025, "Launching the Genesis Mission," declares that the United States is in a race for global technological dominance in artificial intelligence and establishes a coordinated national effort intended to accelerate scientific discovery, strengthen national security, secure energy dominance, and advance American technological and strategic leadership. The same policy direction is reflected in Executive Order 14318 of July 23, 2025, "Accelerating Federal Permitting of Data Center Infrastructure," which prioritizes rapid buildout of AI data centers and the energy infrastructure upon which they depend; Executive Order 14179 of January 23, 2025, "Removing Barriers to American Leadership in Artificial Intelligence"; Executive Order 14156 of January 20, 2025, "Declaring a National Energy Emergency";

² Notice Denying Late Intervention at 1-2, Accession No. 20260812-3135.

³ *Am. Whitewater*, slip op. at 2-3, 18-26.

Executive Order 14181 of January 24, 2025, “Emergency Measures to Provide Water Resources in California and Improve Disaster Response in Certain Areas”; the July 23, 2025 America’s AI Action Plan; and Executive Order 14365 of December 11, 2025, concerning a national policy framework for artificial intelligence. These directives do not displace the Federal Power Act, Rule 214, NEPA, or other applicable law, but they provide relevant federal policy context favoring careful consideration of all reasonable alternatives that may preserve or modernize existing water and energy infrastructure where legally and technically feasible.

Congressional enactments reinforce that infrastructure context. The One Big Beautiful Bill Act, Pub. L. No. 119-21 (July 4, 2025), expanded and restored important investment-expensing provisions, including 100-percent bonus depreciation for qualifying investment and an increased Section 179 expensing limitation, thereby strengthening incentives for capital-intensive infrastructure investment such as may be required for the Potter Valley Dam Hydroelectric Power Project. Section 4007 of the Water Infrastructure Improvements for the Nation Act (“WIIN Act”) separately authorizes the Department of the Interior, subject to statutory requirements, to participate financially in specified federal, state-led, and Reclamation-State water-storage projects. Those authorities do not themselves require FERC to create or finance a particular Potter Valley alternative, but they demonstrate a broader federal policy environment in which water storage, reliable energy, AI infrastructure, semiconductor manufacturing, critical materials, advanced manufacturing, agriculture, and national-security infrastructure increasingly intersect. This can be characterized as the: “Water-Energy-Food-Climate-Society-Ecosystem-Infrastructure-Finance NEXUS” which follows a governance model by the WEF-CSEF (World Economic Forum and Collaborative Stakeholder Engagement Framework) and ISO 14040, 14044, 14071 LCA, LCI, LCIA, *et al.* and etc.

We submit that one must pay particular attention to the recent America First Policy Institute (AFPI) investigation into the decommissioning process, and the recent public announcements by Secretary Brooke L. Rollins of the Department of Agriculture commenting on preserving agriculture, and also John Rich’s recent comments in a 4 minute video posted on X about the Potter Valley Dam decommission impact on about 750,000 people, about 350,000 acres of farms and related local community issues in his official Trump-administration role as **Special Envoy for American Landowners**, working with the U.S. Department of Agriculture.

Against that backdrop, Infrastruk respectfully submits that the Commission should treat the proposed water-energy-agriculture-infrastructure NEXUS as presenting issues of potential national, not merely local, significance and should preserve the procedural ability to evaluate an integrated reasonable alternative before irreversible decommissioning forecloses it. Infrastruk further urges the Commission, acting within its statutory authority and in coordination with the Department of Energy, Department of the Interior, Department of Agriculture, Bureau of Reclamation, and other responsible agencies, to consider whether appropriate projects could be advanced through coordinated “Federal NEXUS Energy-Water Corridors” or comparable priority infrastructure zones designed to accelerate, consistent with applicable law, the permitting and development of water and energy infrastructure serving communities and agriculture,

defense and national-security facilities, AI and data centers, semiconductor fabrication, critical-mineral processing, advanced-materials manufacturing, and related supporting infrastructure.

The declared national-emergency and Defense Production Act context further supports preserving rather than prematurely eliminating potentially strategic infrastructure options. Executive Order 14156 declared a national energy emergency, and subsequent Presidential determinations under section 303 of the Defense Production Act have addressed grid infrastructure and large-scale energy and energy-related infrastructure. The authority to declare a national emergency and invoke or delegate Defense Production Act powers rests with the President and other officials as provided by law; FERC does not itself possess a freestanding power to declare such a national emergency or guarantee water supplies. Infrastruk therefore does not ask the Commission on rehearing to exercise powers it does not possess. It asks the Commission to grant intervention, preserve a complete administrative record, evaluate legally available alternatives, **and, where appropriate, coordinate with or refer national-priority infrastructure issues to the President, DOE, Interior, Reclamation, Agriculture and other agencies possessing the relevant emergency, financing, water-storage, energy, agriculture, permitting, or Defense Production Act authorities.**

II. PROCEDURAL BACKGROUND

PG&E filed its final application to surrender and decommission the Potter Valley Hydroelectric Project on July 25, 2025. FERC issued notice on October 31, 2025 and initially established December 1, 2025 as the deadline for comments, interventions, and protests. On December 1, 2025, FERC extended that deadline to December 19, 2025.⁴

On May 22, 2026, FERC initiated a new scoping phase for the proposed surrender, decommissioning, and non-project use of project lands.⁵ FERC stated that its NEPA document would identify potential adverse and beneficial impacts and consider **reasonable alternatives**, and staff encouraged comments concerning **possible alternatives**, potential impacts, and pertinent research or analyses.⁶

Infrastruk filed its Motion on July 23, 2026. The Motion acknowledged that intervention was late and sought an affirmative finding of good cause. It represented that environmental review remained underway, that Infrastruk would accept the record as it then existed, that it would not seek reopening of previously completed procedural stages, that it would participate prospectively, and that intervention would not require delay of the existing schedule.⁷

⁴ Pac. Gas & Elec. Co., Notice Extending Comment Period, Project No. 77-332, 90 Fed. Reg. 55,865 (Dec. 4, 2025) (dated Dec. 1, 2025), Accession No. 20251201-3070 (extending comments, interventions, and protests to Dec. 19, 2025).

⁵ FERC, Notice of Scoping Meetings and Request for Comments on Proposed Surrender, Decommissioning, and Non-Project Use of Project Lands, Project No. 77-332 (May 22, 2026), Accession No. 20260522-3069.

⁶ FERC, Potter Valley Hydroelectric Project, Docket No. P-77-332 (updated July 30, 2026) (stating that the NEPA document will identify adverse and beneficial impacts and consider reasonable alternatives and encouraging comments on possible alternatives, impacts, research, and analyses).

⁷ Motion for Late Intervention of Infrastruk Group LLC and Notice of Continued Operation and Successor Licensee Alternative at 4-5, Project No. P-77-332 (filed July 23, 2026), Accession No. 20260723-5046.

The Motion requested party status subject to the existing record and procedural schedule and asked the Commission to evaluate, rather than prejudge, a continued-operation/successor-entity alternative.⁸

Friends of the Eel River, California Trout, and Trout Unlimited opposed. Their July 30 filing argued that Infrastruk lacked a cognizable interest, lacked good cause, and would cause disruption and prejudice, and it emphasized prior 2019 and 2022 licensing deadlines.⁹ Infrastruk replied that intervention was separate from obtaining a license and that it sought participation in the existing surrender proceeding, not immediate issuance of a license.¹⁰

Infrastruk repeated that clarification in its reply to the City of Ukiah, stating that it did not seek to reopen the 2019 licensing process and would accept the existing procedural posture while the Commission evaluated reasonable alternatives.¹¹

On July 24, 2026 - one day after Infrastruk filed - FERC extended the scoping-comment period through September 18, 2026.¹² Thus, when the August 12 Notice issued, the environmental scoping process that Infrastruk identified as material remained open for more than another month.

On August 12, 2026, the Secretary issued the Notice Denying Late Intervention. The Notice held that the May 22 Scoping Notice did not establish a new intervention deadline and, citing Broadview Solar and California Trout, concluded that Infrastruk lacked good cause. The Notice nevertheless stated that the Commission would consider Infrastruk's July 23 comments and expressly characterized the denial as **final agency action** subject to rehearing.

III. STANDARD GOVERNING REHEARING AND LATE INTERVENTION

Rule 713 requires a rehearing request to state concisely the alleged error, include a separately enumerated Statement of Issues with representative precedent, and set forth matters relied upon when rehearing is based on matters unavailable at the time of the final action.⁵

Rule 214(b)(3) requires an untimely movant to show good cause why the time limitation should be waived. Rule 214(d)(1) provides that the decisional authority may consider good cause for the late filing, disruption, adequate representation, prejudice or additional burdens, and conformity with Rule 214(b).¹³

Rule 214 also contains safeguards specifically designed for late intervention. Except as otherwise ordered, late intervention must not be a basis for delaying an existing procedural

⁸ Id. at 8 (requesting late intervention subject to the existing record and procedural schedule and seeking evaluation of the continued-operation alternative).

⁹ Opposition to Infrastruk Group LLC's Motion for Late Intervention at 2, 5-8, Friends of the Eel River, California Trout & Trout Unlimited, Project No. P-77-332 (July 30, 2026) (arguing lack of cognizable interest, lack of good cause, disruption, prejudice, and expiration of prior licensing opportunities).

¹⁰ Reply of Infrastruk Group LLC in Support of Motion for Late Intervention at 2-4, Project No. P-77-332 (Aug. 1, 2026).

¹¹ Reply/Motion for Leave of Infrastruk Group LLC to City of Ukiah Opposition at 3-6, Project No. P-77-332 (Aug. 8-9, 2026) (clarifying that Infrastruk did not seek to reopen the 2019 licensing process and would accept the existing procedural posture).

¹² FERC, Notice Extending Scoping Comment Period, Project No. P-77-332 (July 24, 2026), Accession No. 20260724-3049; FERC, Potter Valley Hydroelectric Project, Docket No. P-77-332 (comments due Sept. 18, 2026).

¹³ 18 C.F.R. § 385.214(b)(3), (d)(1) (2026).

schedule; the Commission may limit participation to avoid delay or prejudice; and a late intervenor ordinarily must accept the previously developed record.¹⁴

American Whitewater confirms that the Commission may treat failure to establish good cause as sufficient in an appropriate case and is not mechanically required to discuss every Rule 214(d)(1) factor. But the court also held that the Commission must apply its rules and precedents even-handedly and provide a reasoned explanation for materially different treatment.

IV. AMERICAN WHITEWATER REQUIRES REHEARING

American Whitewater is unusually close to this case. It concerned an untimely intervention request in a hydroelectric-license surrender proceeding. The D.C. Circuit rejected the argument that Rule 214 necessarily compelled consideration of all remaining factors once good cause was absent, but vacated the Commission's orders because FERC had inconsistently applied its late-intervention precedent without adequate explanation.

The court identified Commission decisions in which out-of-time intervention was granted even though the Commission did not demand the same threshold showing it applied to American Whitewater. It emphasized that an agency may change course, but must explain the change and treat similarly situated parties similarly.¹⁵

The August 12 Notice does not discuss American Whitewater, even though it was decided nineteen days before the Notice and one day after Infrastruk filed its Motion. Rehearing is the appropriate vehicle for the Commission to address that intervening authority and explain whether the Potter Valley denial is consistent with the Commission precedent analyzed by the D.C. Circuit.

V. CALIFORNIA TROUT DOES NOT RESOLVE THE AMERICAN WHITEWATER ISSUE

The August 12 Notice relies on California Trout. In American Whitewater, however, FERC relied on the same case for essentially the same proposition: that a person with notice of a proceeding who fails timely to intervene lacks good cause. The D.C. Circuit held that this response missed the separate point that the Commission had repeatedly departed from its late-intervention precedent.¹⁶

California Trout remains relevant, but the factual posture is not identical. There, the Ninth Circuit concluded that the asserted later information principally strengthened concerns that were already foreseeable and that the movants waited substantially longer before seeking intervention.¹⁷ Here, Infrastruk filed while FERC was expressly soliciting alternatives and technical analyses, and FERC extended that scoping period the next day through September 18, 2026.

¹⁴ 18 C.F.R. § 385.214(d)(2)-(3) (2026).

¹⁵ *Am. Whitewater*, slip op. at 18-26; see also *W. Deptford Energy, LLC v. FERC*, 766 F.3d 10, 17, 20 (D.C. Cir. 2014); *Westar Energy, Inc. v. FERC*, 473 F.3d 1239, 1241 (D.C. Cir. 2007).

¹⁶ *Id.* at 21-22 (explaining that reliance on California Trout did not answer the inconsistent-precedent argument and that California Trout predated later Commission intervention practice).

¹⁷ *Cal. Trout v. FERC*, 572 F.3d 1003, 1022-26 (9th Cir. 2009).

Accordingly, California Trout may inform the good-cause analysis, but it does not eliminate the separate obligation identified in American Whitewater to reconcile materially inconsistent Commission precedent.

VI. THE NOTICE ANSWERS A DIFFERENT QUESTION THAN THE ONE PRESENTED

The Notice states that the May 22 Scoping Notice did not establish a new intervention deadline. Infrastruk accepts for purposes of rehearing that the May 22 notice did not expressly announce a new Rule 214 deadline. That does not answer whether the subsequent scoping process constituted a material development supporting good cause for a late motion.

Commission precedent demonstrates that subsequent developments can matter. In Northern Natural, the Commission permitted late intervention in connection with a significant policy development not apparent at the outset; Broadview Solar later distinguished Northern Natural on that basis.¹⁸ Erie Boulevard likewise found good cause where the relationship between two proceedings was not entirely clear early on.¹⁸

Those authorities do not compel intervention here. They establish, however, that the relevant inquiry is not limited to whether a later notice formally resets a deadline. The Commission should address whether the May-July 2026 developments materially clarified the issues and Infrastruk's need for party participation.

VII. THE JULY 24 EXTENSION CONFIRMS AN ACTIVE PRE-DECISIONAL STAGE

Infrastruk filed on July 23. On July 24, FERC extended scoping comments through September 18. The August 12 denial therefore occurred before completion of scoping, before issuance of a final environmental document, and before any dispositive surrender order.

That procedural posture matters. Commission precedent applies a stricter late-intervention approach after a dispositive order because prejudice to other parties and burden on the Commission are substantially greater at the post-decisional stage.¹⁹ Infrastruk did not seek to enter after a final surrender order; it sought prospective participation while the Commission's environmental analysis of reasonable alternatives remained open.

VIII. RULE 214 SAFEGUARDS AND INFRASTRUK'S COMMITMENTS

Infrastruk did not ask the Commission to accept a bare assurance that intervention would be harmless. The Motion offered commitments that track Rule 214 itself: accept the existing record, do not reopen completed stages merely by virtue of intervention, participate prospectively, accept the current schedule, and accept reasonable restrictions.²⁰

These safeguards provide a less disruptive alternative to complete exclusion. If the Commission remains concerned about reliance interests, schedule, or burden, it can grant limited

¹⁸ Am. Whitewater, slip op. at 19-20 (discussing Northern Natural Gas Co., 175 FERC ¶ 61,052 (2021), and Broadview Solar, LLC, 175 FERC ¶ 61,228, PP 9-10 (2021)).

¹⁹ Am. Whitewater, slip op. at 20-21; Tennessee Gas Pipeline Co., 162 FERC ¶ 61,167, P 10 (2018); Broadview Solar, LLC, 174 FERC ¶ 61,199, P 14 (2021); Ampersand Christine Falls Hydro, LLC, 194 FERC ¶ 61,048, P 8 (2026).

²⁰ 18 C.F.R. § 385.214(d)(2)-(3) (2026); Motion for Late Intervention at 4-5, 8, Accession No. 20260723-5046.

prospective intervention subject to conditions. That approach gives effect to Rule 214(d)(2)-(3) rather than treating late intervention as an all-or-nothing choice.

IX. INTERVENTION IS DISTINCT FROM LICENSING RELIEF

The opposition focused heavily on the 2019 and 2022 licensing deadlines and characterized Infrastruk's purpose as an effort to become a successor licensee. Infrastruk's replies expressly narrowed the issue: intervention is separate from an adjudication that Infrastruk is entitled to a license, and Infrastruk did not ask the Commission through the Motion to reopen the 2019 process or immediately issue a license.²¹

Granting intervention would not issue a license, transfer PG&E's license, compel PG&E to continue operating, invalidate the Two-Basin Solution, suspend ERPA's work, or determine that any continued-operation alternative is legally available or reasonable. Those remain merits questions for the Commission and other authorities.

The Commission can therefore grant party status while reserving every substantive licensing, transfer, property, feasibility, environmental, and public-interest issue. If a proposed alternative is legally unavailable, the Commission may say so on the merits after reasoned consideration.

X. CONSIDERATION OF COMMENTS AND DENIAL OF PARTY STATUS

The August 12 Notice expressly states that the Commission will consider Infrastruk's July 23 comments.²² Infrastruk does not contend that consideration of comments automatically creates a right to intervention. But it does demonstrate that Infrastruk's substantive material can remain before the Commission without reopening the proceeding or excluding the information from the decisional record.

The practical difference created by the denial is procedural party status. American Whitewater recognizes that denial of intervention can impair the ability to seek reopening, rehearing, and judicial review of later dispositive Commission action.²³ Where substantive comments are already being considered and participation can be prospectively limited, the Commission should explain why complete denial of party status is necessary.

XI. INFRASTRUK'S INTEREST IS DISTINCT

Rule 214 permits consideration of whether a movant's interest is adequately represented by existing parties.²⁴ Infrastruk asserted interests in continued operation or other preservation alternatives, water-supply infrastructure, hydroelectric and energy infrastructure, agriculture, engineering, environmental protection, economic consequences, financing, and institutional arrangements.

²¹ Reply of Infrastruk Group LLC at 3-4 (Aug. 1, 2026); Reply/Motion for Leave to City of Ukiah Opposition at 3-6 (Aug. 8-9, 2026).

²² Notice Denying Late Intervention at 2 n.3, Accession No. 20260812-3135 (stating that the Commission will consider Infrastruk's July 23, 2026 comments).

²³ Am. Whitewater, slip op. at 10-12, 25-26 (discussing party status and FPA section 313 review rights).

²⁴ 18 C.F.R. § 385.214(d)(1)(iii) (2026).

Existing parties advocating materially different outcomes do not necessarily represent that combination of interests. The existence of substantial opposition to Infrastruk's position confirms the divergence. That disagreement does not establish that Infrastruk is correct, but it does bear on whether its asserted perspective is adequately represented.

XII. NEPA PROVIDES CONTEXT FOR GOOD CAUSE

Infrastruk does not contend that NEPA independently creates a right to intervene under Rule 214. Rule 214 governs party status. NEPA is relevant because the Commission itself initiated a process directed toward identifying impacts and considering reasonable alternatives, and it invited information concerning alternatives, impacts, research, and analyses.²⁵

The existence and timing of that process are relevant to whether Infrastruk demonstrated good cause when it sought party participation and whether allowing prospective intervention would materially disrupt the proceeding. The Commission remains free to determine that an alternative presented by Infrastruk is not reasonable.

XIII. COMMISSION PRECEDENT MUST BE RECONCILED

American Whitewater identified a series of Commission decisions in which late intervention was permitted under approaches that did not consistently demand the same threshold showing the Commission invoked against American Whitewater. Those decisions include Northern Natural and cases involving even longer delays, including Transcontinental Gas Pipe Line and Mountain Valley Pipeline.²⁶

Infrastruk does not contend that those cases are factually identical. The point is procedural: after American Whitewater, if the Commission concludes that Potter Valley is materially different, the Commission should identify the relevant distinctions and explain why they justify denial. A reasoned distinction would satisfy the agency's obligation; silence does not.

XIV. AMERICAN WHITEWATER WAS UNAVAILABLE WHEN THE MOTION WAS FILED

Infrastruk filed its Motion on July 23, 2026. American Whitewater was decided on July 24. Infrastruk therefore could not have cited it in the Motion. The decision nevertheless existed before the August 12 final agency action and is directly relevant to the legal standard applied to late intervention.

Rule 713 specifically contemplates rehearing based on matters that were not available for consideration when the challenged action was entered and requires the applicant to identify the matter relied upon.²⁷ Infrastruk squarely presents American Whitewater now so the Commission has the first opportunity to address its effect.

²⁵ FERC, Potter Valley Hydroelectric Project, Docket No. P-77-332 (updated July 30, 2026).

²⁶ Am. Whitewater, slip op. at 18-20, 24-26 (discussing, inter alia, Northern Natural Gas Co., 175 FERC ¶ 61,052 (2021); Transcontinental Gas Pipe Line Co., 182 FERC ¶ 61,006, PP 11, 86 (2023); and Mountain Valley Pipeline, LLC, 161 FERC ¶ 61,043, PP 21-22 (2017)).

²⁷ 18 C.F.R. § 385.713(c)(3) (2026) (requiring a rehearing request based on matters unavailable at the time of the final action to set forth the matters relied upon).

XV. THE NOTICE REQUIRES A MORE COMPLETE REASONED EXPLANATION

Agency action must be reasonable and reasonably explained, and a reviewing court may sustain agency action only on the grounds articulated by the agency.²⁸ The August 12 Notice does not address American Whitewater; does not reconcile the Commission precedents identified there; does not discuss the July 24 extension; does not address Infrastruk's existing-record and no-delay commitments; does not discuss limited intervention under Rule 214(d)(3); and does not expressly separate party status from the ultimate availability of licensing relief.

Rehearing allows the Commission to correct or clarify those matters without prejudging the ultimate surrender or any alternative. If the Commission concludes that the asserted distinctions still do not establish good cause, it can explain why. If it concludes that limited prospective intervention is appropriate, Rule 214 provides the mechanism.

XVI. ALTERNATIVE REQUEST FOR LIMITED PROSPECTIVE INTERVENTION

If the Commission declines to grant unrestricted intervention, Infrastruk alternatively requests limited prospective intervention under Rule 214(d)(3). The Commission can order that Infrastruk:

- accept the administrative record as developed before intervention;
- not use intervention as a basis to delay any existing procedural schedule;
- participate prospectively in environmental review, reasonable alternatives analysis, technical proceedings, surrender, and subsequent decisional stages;
- not reopen previously completed procedural stages solely by virtue of intervention;
- not treat intervention as reopening the 2019 licensing process or as an adjudication of entitlement to a successor license;
- not interfere with existing participants' work except through ordinary prospective participation authorized by Commission rules; and
- comply with any further reasonable limitation the Commission imposes to prevent identifiable delay or prejudice.

This relief gives practical effect to Rule 214(d)(2)-(3) and protects both existing reliance interests and Infrastruk's interest in prospective party participation.

XVII. PRESERVATION FOR JUDICIAL REVIEW

Infrastruk presents each issue so the Commission has the first opportunity to correct the asserted error and so the issues are preserved to the fullest extent permitted by FPA section 313. Nothing in this Request selects a judicial forum in advance. If review later becomes necessary, Infrastruk reserves all rights concerning standing, venue, jurisdiction, timing, and the appropriate United States Court of Appeals under 16 U.S.C. § 8251(b).²⁹

Infrastruk specifically preserves its objections that the denial is arbitrary and capricious; that the Commission failed to reconcile materially inconsistent precedent; that it failed adequately to

²⁸ FCC v. Prometheus Radio Project, 592 U.S. 414, 423 (2021); Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 50 (1983).

²⁹ 16 U.S.C. § 8251(a)-(b); Am. Whitewater, slip op. at 10-12, 25-26.

address material subsequent developments and procedural posture; that it failed adequately to distinguish party status from substantive licensing relief; and that it failed adequately to address limited prospective intervention and Infrastruk's existing-record and no-delay commitments.

XVIII. REQUEST FOR COMMISSION ACTION ON REHEARING

The August 12 Notice expressly characterizes itself as **final agency action** and directs that rehearing may be sought under FPA section 313(a) and Rule 713. Infrastruk therefore respectfully requests consideration and determination of this Request by the Federal Energy Regulatory Commission.

For eFiling, FERC's current instructions identify the filing type as General > Request for Rehearing > Request for Rehearing and require selection of the docket number.³⁰

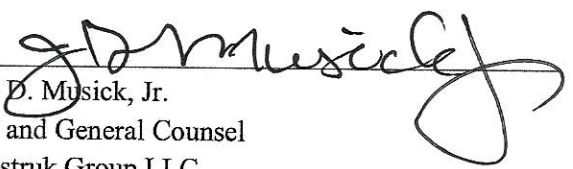
XIX. CONCLUSION

For the foregoing reasons, Infrastruk Group LLC respectfully requests that the Commission:

- GRANT REHEARING of the August 12, 2026 Notice Denying Late Intervention, Accession No. 20260812-3135;
- VACATE OR REVERSE the denial of Infrastruk's July 23, 2026 Motion for Late Intervention, Accession No. 20260723-5046;
- GRANT INFRASTRUK PARTY STATUS in Project No. P-77-332;
- ALTERNATIVELY, GRANT LIMITED PROSPECTIVE INTERVENTION under 18 C.F.R. § 385.214(d)(3), subject to reasonable restrictions preventing delay or prejudice;
- CLARIFY that granting intervention does not adjudicate whether Infrastruk or any other entity is entitled to a successor license, license transfer, continued-operation authorization, or other substantive approval;
- ADDRESS EXPRESSLY *American Whitewater v. FERC*, No. 25-1092 (D.C. Cir. July 24, 2026), and the Commission intervention precedents discussed therein;
- ADDRESS EXPRESSLY the significance, if any, of the Commission's July 24, 2026 extension of scoping comments through September 18, 2026;
- PRESERVE INFRASTRUK'S JULY 23, 2026 comments and submissions as part of the administrative record, consistent with the August 12 Notice; and
- GRANT such other relief as the Commission determines just and appropriate.

Respectfully submitted,

INFRASTRUK GROUP LLC

By: 

John D. Musick, Jr.

EVP and General Counsel

Infrastruk Group LLC

³⁰ FERC, How to File a Request for Rehearing (current Aug. 14, 2026) (in eFiling: General > Request for Rehearing > Request for Rehearing).

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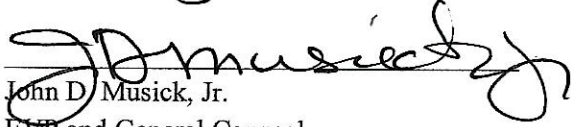
Email: jm@infrastrugroup.com

Dated: August 15, 2026

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Request of Infrastruk Group LLC for Rehearing of August 12, 2026 Notice Denying Late Intervention upon each person designated on the official service list compiled by the Secretary in Project No. P-77-332, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated: August 15, 2026


John D. Musick, Jr.
EVP and General Counsel
Infrastruk Group LLC