

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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In the Matter of the Application of California-
American Water Company (U 210 W) for
Approval of the Monterey Peninsula Water
Supply Project and Authorization to Recover
All Present and Future Costs in Rates.

A.12-04-019
(Filed April 23, 2012)

**MARINA COAST WATER DISTRICT'S
MOTION TO MODIFY PROCEDURAL SCHEDULE**

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I. Introduction.

In accordance with Article 11 of the Commission’s Rules of Practice and Procedure and the provisions of the Assigned Commissioner’s Scoping Memo and Ruling (the “Scoping Memo”) issued June 28, 2012 herein, authorizing the Assigned Administrative Law Judge to make revisions and provide direction concerning scoping and scheduling matters, and the August 29, 2012 Administrative Law Judge’s Directives to Applicant and Ruling on Motions Concerning Scope, Schedule and Official Notice (the “Scope and Schedule Ruling”), Marina Coast Water District (“MCWD”) respectfully moves the Assigned Administrative Law Judge for a ruling modifying the coordinated schedule as established in the Scope and Schedule Ruling, solely with respect to the Parties’ deadlines for submission of briefs and in order to provide an opportunity for further hearings and full briefing on the issue of the proposed project’s influence on the environment, pursuant to section 1002, subdivision (a) of the Public Utilities Code.

MCWD requests that the procedural schedule be modified to provide that (1) Cal-Am and all Parties be afforded an opportunity to request limited additional hearings following publication of the Commission’s final Subsequent Environmental Impact Report (“EIR”) with written public comments, which hearings, if any, shall conclude no less than seven days prior to the deadline for filing Opening Briefs; and (2) Opening Briefs be due on a date no less than the later of thirty days after publication of the Commission’s final Subsequent EIR with written public comments *or* thirty days after the close of additional hearings, if any, with the Reply Brief deadline to follow no less than fourteen days later. MCWD does not request any other change to the coordinated schedule. To be clear, MCWD does not bring

this Motion in relation to any compliance issue related to the California Environmental Quality Act (“CEQA”). This Motion speaks only to the Certificate of Public Convenience and Necessity (“CPCN”) requirements under Public Utilities Code section 1002, subdivision (a) and *Northern California Power Agency v. Public Utilities Com.* (1971) 5 Cal.3d 370 to consider all relevant factors.

II. The Parties Must Be Apprised of the Proposed Project’s Anticipated Influence on the Environment in Order to Fully Brief Public Convenience and Necessity.

The existing schedule for this application proceeds on two separate tracks – a CEQA compliance track and a CPCN track. However, the Commission is required by law to consider and weigh the potential environmental impacts of the project in making its CPCN determination. Thus, the Parties’ briefs must also address such impacts in order for the Commission’s decision to fully evaluate all relevant CPCN factors. That would be true even if CEQA did not exist or if the proposed project for some reason were exempt from CEQA, because a project’s influence on the environment is one of the factors that must be considered in determining whether or not the project is necessary and in the public interest. (Pub. Util. Code §1002, subd. (a).)

A CPCN determination must be made on the basis of all relevant factors. (*See Northern California Power Agency v. Public Utilities Com.* (1971) 5 Cal.3d 370.) Impact, or influence on the environment is a relevant factor to be considered at the hearing in determining whether the public convenience and necessity requires the construction of the project. (Pub. Util. Code §1002, subd. (a).) In the *Northern California Power Agency* case, the Commission represented to the California Supreme Court that it was required to consider environmental factors at a CPCN hearing. As stated by the Supreme Court:

Indeed, the answer of the Commission in this case . . . states: “When a hearing is requested under Section 1005 [of the Public Utilities Code], as in this case, the Commission will notice and hold a hearing, and may do so on its own motion, so that it may be apprised of any relevant factors bearing on the issue of public convenience and necessity. [Par.] Such factors include the effect on the environment”

(Northern California Power Agency, supra, 5 Cal.3d at p. 378; see also Atlantic Refining Co. v. Public Service Com. (1959) 360 U.S. 378, 391 (in determining “public convenience and necessity,” the decision-making agency is required to “evaluate all factors bearing on the public interest.”).)

To date in this proceeding, the Parties’ ability to fully develop a factual background concerning environmental factors and related effects on such matters as feasibility, cost and public health has necessarily been severely hampered by the lack of even a draft EIR. Indeed, Cal-Am’s chief engineer, Richard Svindland, has frequently responded to cross-examination on technical issues by stating only that the answer to the question would be revealed in the EIR. Requiring Cal-Am and all of the Parties to attempt to fully brief the project in an informational vacuum will prevent the Commission from balancing all relevant factors and making a fully informed CPCN decision on a complete evidentiary record.

III. The Parties Must Be Afforded an Opportunity to Examine Witnesses With the Benefit of a Complete Record on Potential Environmental Impacts.

Having the benefit of the Commission’s Subsequent EIR including the written public comments to the EIR will enable the participants to weigh the sufficiency of their examination of witnesses on matters related to the proposed project’s influence on the environment. The Commission has plainly acknowledged that parties are entitled to present and test evidence relevant to potential environmental impacts and cross-examine witnesses on issues related to influence on the environmental at the CPCN hearing. (*See Northern*

California Power Agency, supra, 5 Cal.3d at p. 378.) Because this application is proceeding on completely separate CPCN and CEQA tracks, the present hearings are being conducted on a less-than-complete evidentiary record.

After the Commission's EIR has been circulated and commented on, Cal-Am and the Parties will have had an opportunity to evaluate whether or not a limited further examination of certain witnesses may be necessary in order to fully brief their CPCN positions. Examination and briefing on environmental issues cannot be divorced from their CPCN significance merely on account of the concurrent CEQA review of a project. Evidence developed in the EIR may also affect issues related to cost, feasibility and other matters touching on necessity and the public interest. The Parties must be afforded an opportunity to examine witnesses whose existing testimony is relevant to the results of the CEQA review and public EIR comments, and thus is necessarily related to the CPCN analysis.

IV. Conclusion.

Because evidence concerning the environmental impacts of the project is not yet available, but nonetheless must be considered in the Commission's CPCN decision, the schedule reflected in the Scope and Schedule Ruling should be modified to ensure that the EIR and the results of the public comment period are available for a reasonable period of time prior to the briefing deadlines. For the same reasons, the schedule should ensure that Cal-Am and the Parties are afforded an opportunity for such further relevant evidentiary hearings as may be required concerning the issue of influence on the environment before submitting their CPCN briefs. Only after environmental review is completed will Cal-Am and the Parties be able to fully address how the potential environmental impacts of the project may affect the public interest and the public convenience and necessity.

