

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



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Application of California-American Water  
Company (U210W) 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)

**CALIFORNIA-AMERICAN WATER COMPANY  
RESPONSE TO MOTION OF MARINA COAST WATER DISTRICT TO MODIFY  
PROCEDURAL SCHEDULE**

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**I. INTRODUCTION**

Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), California-American Water Company (“California American Water”) hereby responds to *Marina Coast Water District's* (“MCWD”) *Motion to Modify Procedural Schedule*, filed on May 2, 2013 (“Motion”). As discussed in more detail below, MCWD’s Motion should be denied because it would result in unnecessary and unreasonable delay. In addition, MCWD’s concerns have no merit in light of the fact that environmental issues are properly considered through the Environmental Impact Report (“EIR”) process, which affords ample opportunity for public comment and input. Finally MCWD’s request has *already been addressed and rejected* by the presiding Administrative Law Judge (“ALJ”). In short, MCWD’s proposal to modify the schedule to allow for additional evidentiary hearings and postpone submission of briefs until after issuance of a final EIR is unnecessary, unreasonable and should be rejected.

**II. MCWD’S MOTION SHOULD BE DENIED**

MCWD requests that the procedural schedule be modified to provide extend the deadline for opening briefs by six months or more, and to provide for additional unnecessary evidentiary

hearings.<sup>1</sup> MCWD's Motion should be denied because: (1) it would result in significant delay and jeopardize completion of the project; (2) any relevant environmental issues are properly addressed through the EIR process, and (3) it has already been addressed and rejected by the Commission.

**A. MCWD's proposed modification to the schedule would result in significant delay and jeopardize completion of the project.**

The current schedule appropriately provides for Certificate of Public Convenience and Necessity ("CPCN") and California Environmental Quality Act ("CEQA") review on separate parallel tracks. Under the current schedule, the proposed decision will not be issued until after the final EIR is adopted.<sup>2</sup> This provides an opportunity for the ALJ to address environmental issues in the proposed decision, and for parties to submit written comments before the Commission issues a final decision. The current schedule, which provides for a final decision in late 2013 or early 2014, already represents a significant extension beyond the schedule California American Water originally proposed in its application.<sup>3</sup>

MCWD recommends pushing out the schedule event further, to the detriment of California American Water, its customers, and the Monterey region. Under MCWD's proposal, opening briefs would likely not be filed until 2014, and the decision would be similarly delayed. Such a delay would significantly impair California American Water's ability to implement a water supply solution in Monterey in a timely manner.

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<sup>1</sup> MCWD requests "(1) California American Water and all Parties be afforded an opportunity to request limited additional hearings following publication of the Commission's final 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 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 Motion, p. 1.

<sup>2</sup> *Administrative Law Judge's Directives to Applicant and Ruling on Motions Concerning Scope, Schedule and Official Notice*, filed August 29, 2012 ("ALJ Scope and Schedule Ruling"), p. 9.

<sup>3</sup> ALJ Scope and Schedule Ruling, p. 9; *Application of California-American Water Company (U210S) for Approval of The Monterey Peninsula Water Supply Project and Authorization to Recover all Present and Future Costs in Rates*, filed April 23, 2012 ("Application"), p. 26.

As California American Water has shown, it is crucial that the Commission issue a decision without unnecessary delay.<sup>4</sup> The Commission has also recognized the need for a timely resolution of this matter.<sup>5</sup> The Commission has found that:

If replacement water supplies are not provided in a timely fashion, the water supply deficit that would result would lead to severe water rationing and possible water shortages throughout the CalAm service area. This would create substantial social hardships (e.g., reduced bathing, clothes washing and waste removal) and could lead to adverse public health and safety impacts (e.g., lack of adequate water for fire protection, public health, etc.). The water supply for nearly one-fourth the population of Monterey County would be put in jeopardy and it could lead to economic losses of over \$ 1 billion per year, including 6,000 jobs.<sup>6</sup>

In this proceeding, MCWD has made multiple requests for unnecessary procedural extensions. Interestingly, in the previous proceeding, MCWD took the opposite position. There, MCWD argued *against* changes to the procedural schedule that would delay a final decision.<sup>7</sup> MCWD stated, “time is truly of the essence here,”<sup>8</sup> and urged the Commission to avoid taking actions that would extend the procedural schedule.

MCWD was correct – time is of the essence. The current schedule recognizes this urgency. Since the schedule has already been modified to allow the final EIR to be considered in the CPCN decision, MCWD’s request for further delay should be rejected.

**B. Environmental concerns are properly addressed through the EIR process.**

The ALJ Scope and Schedule Ruling properly establishes separate procedural tracks for CEQA review and the CPCN process. MCWD’s contention that the Commission should

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<sup>4</sup> Application, p. 2.

<sup>5</sup> *Assigned Commissioner’s Scoping Memo and Ruling*, filed June 28, 2012, p. 2 (“Cal-Am’s application is now before us and the December 2016 Cease and Desist deadline approaches.”); D.10-12-016, *In the Matter of the Application of California-American Water Company (U210W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs in Connection Therewith in Rates*, 2010 Cal. PUC LEXIS 548 (“D.10-12-016, 2010 Cal. PUC LEXIS 548”), \*35 (Recognizing urgent need to find an alternative water supply.)

<sup>6</sup> D.10-12-016, 2010 Cal. PUC LEXIS 548 at \*378.

<sup>7</sup> A.04-09-019, *Marina Coast Water District’s Concurrent Reply Brief*, filed July 17, 2010, pp. 17-19.

<sup>8</sup> A.04-09-019, *Marina Coast Water District’s Concurrent Opening Brief*, filed July 2, 2010, p. 78.

consider the EIR in subsequent evidentiary hearings as part of the CPCN process is incorrect. The Commission has found that in CPCN proceedings the CEQA review process is the vehicle for consideration of a proposed project's environmental impacts, as well as other factors in section 1002(a).<sup>9</sup>

The case relied upon by MCWD is inapplicable to the current proceeding. In *Northern California Power Agency v. Public Utilities Commission*, (1971) 5 Cal.3d 370 ("NCPA"), the Court annulled a Commission order granting a CPCN for failing to give adequate consideration to antitrust issues. NCPA did not address CEQA or the sufficiency of the Commission's environmental review at all. At issue in NCPA was a Commission decision that declined to address or make findings on antitrust concerns raised by a party to a CPCN proceeding.<sup>10</sup> Nothing in the current schedule for a final decision prevents the Commission's final decision on the CPCN application from incorporating the results of the EIR process and including appropriate findings. The current schedule does not foreclose consideration of environmental impacts; it simply properly directs such consideration through the CEQA review process.

Environmental impacts in a CPCN proceeding are considered in the separate EIR process, which includes opportunities for public input, and which will be addressed in the Commission's decision. There is no benefit to be gained from the substantial delay that MCWD proposes.

**C. MCWD's request to delay the CPCN track has already been addressed and rejected.**

MCWD's arguments in its Motion have already been addressed and rejected. MCWD cites no new authority in support of its request. The Commission's reasoning for rejecting MCWD's request remains valid and MCWD should be denied a second bite at the apple. By

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<sup>9</sup> See D.10-12-025, *Application of Wild Goose Storage, LLC to Amend its Certificate of Public Convenience and Necessity to Expand and Construct Facilities for Gas Storage Operations (U911G)*, 2010 Cal. PUC LEXIS 463; D.10-07-043, *In the Matter of the Application of Southern California Edison Company (U-338-E) for a Certificate of Public Convenience and Necessity for the San Joaquin Cross Valley Loop Transmission Project*, 2010 Cal. PUC LEXIS 285.

<sup>10</sup> *Northern California Power Agency v. Public Utilities Commission*, (1971) 5 Cal.3d 370, 379.

renewing a motion that has already been made and addressed and rejected by the Commission, MCWD is wasting the time and resources of all involved.

On July 6, 2012 MCWD filed a very similar *Motion to Modify and Clarify Assigned Commissioner's Scoping Memo and Ruling*, in which it argued that testimony and evidentiary hearings should follow issuance of an EIR.<sup>11</sup> The ALJ denied both motions and specifically rejected the argument that the Commission should hold evidentiary hearings for the CPCN after the issuance of an EIR.<sup>12</sup> The ALJ ruled that holding evidentiary hearings “after issuance of the either the draft or final EIR is not in the public interest.”<sup>13</sup> Granting MCWD’s current motion would similarly be against the public interest, and California American Water recommends that it be denied.

**D. California American Water has proposed a reasonable briefing schedule that does not create unnecessary delay.**

At the evidentiary hearing, California American Water suggested that the deadline for opening briefs be extended to accommodate possible settlement.<sup>14</sup> Unlike MCWD’s suggestion, which appears to be recommending an extension just for the sake of creating harmful delay, California American Water thoughtfully recommend that the deadline for opening briefs be pushed back *slightly* in light of the benefits of a possible settlement. California American Water’s proposal for briefing also has the benefit of allowing the parties to review the draft EIR before briefing, while preserving the schedule for a final decision in late 2013 or early 2014.

**III. CONCLUSION**

MCWD’s Motion is contrary to law and would result in needless (and potentially harmful) delay. Timely approval of the MPWSP is critical to ensuring adequate water supply for California American Water’s customers. The two-track process established in the current

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<sup>11</sup> *Marina Coast Water District's Motion to Modify and Clarify Assigned Commissioner's Scoping Memo and Ruling*, filed July 6, 2012, pp. 4-5.

<sup>12</sup> ALJ Scope and Schedule Ruling, pp. 5-7.

<sup>13</sup> *Id.*, p. 7.

<sup>14</sup> RT 2044:22 - 28 (L. Dolqueist/California American Water).

procedural schedule, with CEQA review running concurrently with consideration of the CPCN, is both efficient and consistent with the relevant law. Contrary to MCWD's claims, the current schedule for a final decision does not foreclose consideration of environmental impacts and how they may relate to the CPCN. Therefore, California American Water respectfully urges that MCWD's Motion be denied.

May 17, 2013

Respectfully submitted,

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