

ANG/jv1 9/25/2013



FILED

09-25-13
12:02 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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.

Application 12-04-019
(Filed April 23, 2012)

**AMENDED SCOPING MEMO AND
ASSIGNED COMMISSIONER RULING**

1. Summary

Following the prehearing conference (PHC) held on September 16, 2013, this Amended Scoping Memo and Ruling is issued to formally address the scope of this proceeding and to revise the dates for resolution of this matter.

2. Background

California-American Water Company (Cal-Am) filed this application on April 23, 2012, seeking the Commission's approval of the Monterey Peninsula Water Supply Project (MPWSP) and authorization to recover costs in rates. Protests to the application were filed by Water Plus, LandWatch Monterey County, the Division of Ratepayer Advocates and the Marina Coast Water District. On June 28, 2012, I issued the Scoping Memo and Ruling in this matter. In that Ruling, I confirmed that the proceeding is categorized as "ratesetting," pursuant to Rule 1.3(e) of the Commission's Rules of Practice and Procedure (Rules) and confirmed the determination that the matter should be set for evidentiary hearing.

3. Scope of Phase 1

In the Scoping Memo and Ruling issued on June 28, 2012, I also determined the scope of the proceeding:

The scope of the proceeding shall be confined to resolving the following questions:

Is the proposed Monterey Peninsula Water Supply Project a reasonable and prudent means of securing replacement water for the Monterey District of Cal-Am, and would the granting of the application be in the public interest?

Feasible alternatives to the [MPWSP] will be considered in the California Environmental Quality Act (CEQA) track of the proceeding and by the Commission. This proceeding is for the purpose of determining whether the applied-for project should be approved; it is not a general forum for entertaining water supply options unrelated to the application of a Commission-regulated utility. Local public agencies and other entities are and have been free to conduct such fora, to pursue water supply alternatives on their own or in concert and to influence Cal-Am's shaping of its project application. Cal-Am's application is now before us and the December 2016 Cease and Desist deadline approaches.

The assigned Administrative Law Judge (ALJ) may make any revisions or provide further direction regarding the manner in which issues are to be addressed, as necessary for a full and complete development of the record.¹

On May 30, 2013, ALJ Weatherford issued a ruling that revised the scope and schedule of the proceeding following evidentiary hearings. I affirm ALJ Weatherford's ruling in this amended Scoping Memo and Ruling. Specifically, effective April 1, 2013, the scope of the proceeding was revised as follows:

¹ Assigned Commissioner's Scoping Memo and Ruling issued June 28, 2012 at 2.

Is the proposed MPWSP

- required for public convenience and necessity; and
- a reasonable and prudent means of securing an adequate, reliable and cost-effective water supply that meets Cal-Am's legal requirements for the Monterey District; and
- Would the granting of the application be in the public interest?

On July 31, 2013, Cal-Am filed and served a motion for approval of a comprehensive settlement agreement, signed by 16 parties, and a settlement for approval of a sizing agreement, signed by nine parties. Marina Coast Water District, Water Plus, and the Public Trust Alliance oppose both settlement proposals. Surfrider opposes the sizing agreement settlement, and Landwatch Monterey County has joined in those comments.

The scope of Phase 1 has not changed, but we have modified the schedule for Phase 1 to include dates for hearings on contested factual issues in the settlement proposals, pursuant to Rule 12.2. As ALJ Minkin stated at the PHC, she has a number of questions regarding demand, costs, and financing, which she will set forth in a separate Ruling. The schedule also provides dates for briefing on the settlement proposals and maintains the dates for policy and legal briefs. Several parties have advocated for a postponement of the Draft Environmental Impact Report (DEIR), arguing that data related to the test well must be obtained for purposes of hydrogeology and a better understanding of potential effects of pumping on the groundwater basin. However, even when a test well is established, the well must be run for a certain time period to obtain reliable data. Given the exigencies of timing related to the Cease and Desist Order issued by the State Water Resources Control Board, it is not reasonable to postpone the issuance of the DEIR for an uncertain time period. I have directed

staff to adhere to the schedule set forth in the May 30, 2013 for the issuance of the DEIR and the Final Environmental Impact Report (FEIR).

4. Motion to Bifurcate Proceeding and Scope of Phase 2

On August 21, 2013, Cal-Am filed and served a motion to bifurcate this proceeding, on behalf of the Settling Parties.² Water Plus has opposed this motion. Consistent with the proposal in the comprehensive Settlement Agreement, the Settling Parties move to establish a separate phase of this proceeding, as well as a procedural schedule that will lead to a timely Commission decision on whether to authorize Cal-Am to build a smaller desalination plant that includes a Water Purchase Agreement for water produced from the Groundwater Replenishment (GWR) Project. The GWR Project is being pursued jointly by the Monterey Regional Water Pollution Control Agency and the Monterey Peninsula Water Management District.

As set forth in the proposed sizing settlement agreement, Cal-Am's current proposal is to size the proposed desalination plant to 9.6 millions of gallons per day (MGD) without the GWR Project, 6.9 MGD with 3,000 acre feet per year (AFY) of water assumed to be available from the GWR Project, and 6.4 MGD with 3,500 AFY of water assumed to be available from the GWR Project.

While the agencies sponsoring the GWR Project are not under Commission jurisdiction, the Commission must approve any Water Purchase Agreement that may be proposed by Cal-Am. I find that it is reasonable to grant the Motion and

² As indicated in the Motion, all Settling Parties support this motion, except for Monterey County Farm Bureau and Salinas Valley Water Coalition. These parties indicate that they do not oppose the Motion and that this Motion is outside the scope of their participation in the proceeding.

to set forth the preliminary scope of Phase 2. As the parties recognize, much of the information needed to determine whether the GWR Project is viable is not yet available. Parties represent that a separate phase to consider whether a Water Purchase Agreement for GWR Project water is appropriate would not delay the construction of the desalination plant, if the Commission issues a certificate of public convenience and necessity (CPCN) for the MPWSP. According to the schedule proposed by the Settling Parties, the Commission's decision regarding GWR would be issued prior to Cal-Am's decision point relative to construction of the desalination plant. Delineating the preliminary scope of Phase 2 does not prejudice the Commission's consideration of either the comprehensive settlement agreement or the sizing settlement agreement. Whatever decision is rendered on these matters will be considered as an input in Phase 2.

The preliminary scope of Phase 2 will focus on whether various findings can be made regarding the viability of the GWR Project, whether a smaller desalination plant can be authorized, and whether a Water Purchase Agreement should be approved between Cal-Am and the relevant public agencies managing the GWR Project. The scope of Phase 2 will also consider the terms of any proposed WPA and the revenue requirement of the WPA, vis-a-vis the desalination plant, including any projected debt equivalence for the WPA.

5. Modification of Schedule

I affirm ALJ Weatherford's determination that evidentiary hearings on the EIR are not appropriate. As has been reiterated several times, the environmental track provides ample opportunity for comments on environmental issues:

As stated earlier in this proceeding, no evidentiary hearing is required or, given the outstanding cease and desist order (CDO), appropriate for the environmental reporting track. Consistent with CEQA, parties will have the opportunity to

comment on the DEIR before the FEIR is certified. Those comments, as reflected in the FEIR, will be considered in the Proposed Decision [PD], and parties will also have the opportunity to comment on that PD before the Commission acts. MCWD’s request to have the Opening Briefing occur after the publication of the FEIR or “thirty days after the close of additional hearings, if any,” is denied.

To allow the parties to reference the DEIR and its analysis in their legal briefing (where relevant to the legal analysis and argument of issues covered in opening and reply briefing), the schedule is modified as follows: the due date for the Common Outline Opening Briefs now will be April 29, 2014 (shortly after the April 14, 2014 date when comments on the DEIR will be due), and the due date for Reply Briefs will be May 14, 2014. This approach is consistent with the schedule recommended by Surfrider Foundation and Landwatch Monterey County. Parties may use the information in the DEIR to support their arguments on the issues to be addressed in their briefs, but the briefs are not to be used for critiquing the DEIR. The appropriate place to critique the DEIR is in comments on the DEIR. To repeat, critiques of the DEIR should not take place in the opening and reply legal briefing, but rather in comments on the DEIR.³

The revised schedule for Phase 1 and Phase 2 is set forth below.

CPCN Track		CEQA Track	
July 31, 2013	Settlement Proposal		
August 30, 2013	Comments on Settlement Proposals		

³ ALJ Weatherford’s May 30, 2013 Ruling at 4-5.

CPCN Track		CEQA Track	
September 16, 2013	Prehearing Conference: Status of Settlement Proposal, of CEQA work & other matters		
December 2-3, 2013	Hearings on Settlement Proposals		
January 20, 2014	Opening Briefs on Settlement Proposals		
February 14, 2014	Closing Briefs on Settlement Proposals		
		February 28, 2014	DEIR circulated for comment
March 7, 2014	Cal-Am to file and serve a common outline for legal and policy briefs, after consultation with parties		
		April 14, 2014	Comments on DEIR due
April 29, 2014	Common Outline Opening Briefs filed and served on legal and policy issues		

CPCN Track		CEQA Track	
May 14, 2014	Reply Briefs filed and served on legal and policy issues		
		June 17, 2014	FEIR published
July, 2014	Phase 1 Proposed Decision addressing certification of FEIR and issuance of CPCN		
August, 2014	Target for Commission Action on Phase 1 PD		
December 2014	Phase 2 (GWR decision phase) commences with testimony of interested parties		
January 2015	Settlement discussions		
January 2015	Concurrent Rebuttal Testimony		
February 2015	Evidentiary Hearings		
March 2015	Briefing		
June 2015	Proposed Decision – Phase 2		
July 2015	Target for Commission action on GWR decision		

The assigned ALJ may make any revisions or provide further direction regarding the schedule, as necessary for a full and complete development of the record. The assigned ALJ will provide an updated, more specific schedule for Phase 2. Given the need for two phases in this complicated matter, the date of the final decision to resolve this matter shall not exceed 24 months from the date of this Amended Scoping Memo Ruling, or September 28, 2015. I obviously intend to resolve Phase 1 well before that date, and am targeting August of 2014 for resolution of Phase 1.

IT IS RULED that:

1. The scope of Phase 1 is set forth in Section 3 of this Amended Scoping Memo and Ruling.
2. The scope of Phase 2 is set forth in Section 4 of this Amended Scoping Memo and Ruling.
3. The schedule for this proceeding is set forth in Section 5 of this Amended Scoping Memo and Ruling.
4. Administrative Law Judges Minkin and Weatherford are the Presiding Officers in this matter.
5. The ex parte rules applicable to ratesetting matters continue to apply, as set forth in Pub. Util. Code § 1701.3(c) and Rule 8.3(c).

Dated September 25, 2013, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner