



LR1/CEK/ek4 12/22/2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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In The Matter of the Application of San Diego Gas & Electric Company (U902G) and Southern California Gas Company (U904G) for a Certificate of Public Convenience and Necessity for the Pipeline Safety & Reliability Project.

Application 15-09-013
(Filed September 30, 2015)

**ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S
RULING MODIFYING SCHEDULE AND ADDING SCOPING MEMO
QUESTIONS**

Background

On November 4, 2016, Commissioner Liane Randolph issued an Assigned Commissioner's Ruling establishing the schedule and scope of the Line 3602 proceeding.

On December 6, 2016, the Office of Ratepayer Advocates (ORA), Protect our Communities (POC), Sierra Club, Southern California Generation Coalition (SCGC), and The Utilities Reform Network (TURN) (collectively, "Joint Intervenors") filed a "Joint Motion to Postpone Phase 1 Briefs Until After Testimony and Hearings, Amend the Scoping Memo to Focus on Line 1600 Safety, Require a Complete Application, and Other Relief" (Joint Motion). On December 6, 2016, ORA filed the "Joint Intervenors' Motion to Shorten the Time to Respond to Request for Revised Procedural Schedule and Expedited Ruling."

On December 9, 2016, the assigned ALJ issued an email ruling responding, in part, to the Joint Intervenors' and ORA's motions. Effective immediately, "legal/policy" opening and reply briefs, which were originally due December 19, 2016 and January 23, 2017, were held in abeyance pending further

review of motions and responses to the motions by the assigned Commissioner and Assigned Administrative Law Judge (ALJ). Consistent with Rule 11.1(e) of the Commission's Rules of Practice and Procedure (Rules), the ALJ asked parties to file and serve comments in response to these motions on December 16, 2016. (The time frame for responding to these motions was shortened from 15 days to 10 days.)

The December 9, 2016 email ruling acknowledged that certain parties met and conferred with the Applicants on November 18, 2016. But they could not agree on a stipulation of facts necessary for a meaningful Phase 1 briefing as envisioned in the Scoping Memo. Therefore, in any response to any aspect of the subject motions listed above, the Applicants and other parties were also asked to opine as to whether they see a path for parties to brief any specific issue of law or policy without stipulated facts available.

On December 9, 2016, San Diego Gas and Electric Company and Southern California Gas Company (Applicants) argued that nothing precludes the Commission from allowing briefs on legal/policy issues prior to testimony and the Commission has managed proceedings in just that way in the past. They pointed out that parties were favorable about briefing specific issues before testimony and hearings so that the record could inform the CEQA process. They argued that the issues to be briefed are substantially legal and policy in nature. To the extent that disputed facts emerge, the Scoping Memo affords the parties the ability to simply identify them as such for testimony and hearings. In short, Applicants believe that the Joint Intervenors failed to provide a compelling reason to postpone the procedural schedule and amend the proceeding scope. The Applicants did not respond to the ALJ's December 9, 2016 request to identify specific questions that could involve briefings.

On December 9, 2016, UCAN provided a response supporting the joint motion to postpone Phase 1 briefs until after testimony and hearings. It pointed out that while questions deal with legal and policy issues, they require the Commission to consider and determine a number of disputed facts (e.g., Questions 1, 4, 6, 12). UCAN previously supported briefing of legal issues in advance of hearings, but after careful review of specific questions, asserted that briefs after hearings will allow for a level playing field and inform the issues. In response to the ALJ's December 9, 2016 ruling, UCAN restated this position but added it had an opinion on whether there were any specific issues of policy or law it thought could be briefed. Subsequently, it offered two "legal" and "policy" issues:¹

Consider the relevant Supply/Demand area in this proceeding to include not only SDG&E area but also all SoCalGas pipelines and storage areas, Costa Azul LNG terminal and all connected pipelines between Costa Azul, El Paso Gas (Blyth/Ehrenburg) and SCG pipelines so the Commission can understand the potential long term (20-30 years) functions and feasibility of the proposed L-3602 pipeline.²

[Consider] whether the Commission's Affiliate Transaction Rules are implicated by the pipeline proposal. In prior Commission decisions, there was substantial concern that the parent holding companies of the major investor owned utilities in California were receiving an unfair advantage through their association with a regulated utility, and whether

¹ UCAN stated that the first issue is a "policy" question but did not explicitly state whether the second question is a "policy" or "legal" issue or "both." See "UCAN Supplemental Response Supporting the Joint Motion to Postpone Phase 1 Briefs until After Testimony and Hearings" at 2-3.

² *Id.* at 1-2

there were conflicts that were overlooked when regulated utilities proposed projects.³

In response to the ALJ's December 9, 2016 ruling, ORA provided a detailed accounting of material facts that it believes need to answer Scoping Memo Questions 1 through 7 and 7 through 15. In response to each question, it asserted, "This question cannot be answered because some asserted facts are incomplete, missing, and in dispute, and the record has yet to develop them."⁴ While at least one question (Question 11) could potentially be answered strictly as an issue of law, the second fact-based part of the question is interrelated.⁵ ORA also pointed out that the Applicants have failed to cure deficiencies in its current amended application as specified in the Scoping Memo.⁶

This ruling responds to each outstanding request that was not addressed in the December 9, 2016 ruling. Any outstanding requests not yet ruled on are hereby deemed denied.

1. Responses to Outstanding Motions/Requests from Parties:

1) Request to postpone briefs on Phase 1 until after all parties have prepared and served testimony and hearings have been held.

At the PHC, most parties were sympathetic to initially addressing the standard of review pertaining to the appropriate reliability standard and demand forecasts that would inform the CEQA process. However, given a more careful review of issues through a robust discovery process, it is increasingly

³ *Id.* at 2-3.

⁴ The Office of Ratepayer Advocates' Response Pursuant to Administrative Law Judge Colette Kersten's Email Ruling of December 9, 2016" at 2-13.

⁵ *Id.* at 9.

⁶ Scoping Memo at 10-11.

apparent, at least in this stage of the proceeding, that there may be a fine line between the legal/policy and factual issues that form the foundation of this complex proceeding. In comments, Joint Intervenors, ORA, and UCAN make a compelling case that it may not be prudent to conduct preliminary briefs before testimony is received on threshold material facts and evidentiary hearings are conducted. While the Applicants suggest that most of the questions are substantially “legal” or “policy” ones and have prepared preliminary briefs, they provided only limited input regarding what questions should be considered strictly in one category or the other.

Based on concerns raised by parties, we see no downside to postponing briefs on Phase 1 until after parties have prepared and served testimony and hearings have been held. Based on detailed feedback from parties, we see a timely opportunity to ask for early testimony on *all* previously identified “legal/policy” questions related to 1-7 and 11-15 with evidentiary hearings and then briefs to follow. Following up UCAN’s suggestion to brief specific issues, we do not think it is necessary to separately brief the long-term gas supply/demand considerations in the area or “implications” of affiliate transaction rules, because these issues are more or less covered in existing Phase 1 and 2 questions that involve disputed facts, testimony and hearings.

We acknowledge that California has adopted aggressive decarbonization requirements, including mandatory greenhouse gas reductions of at least 40% below 1990 levels by 2030 and a doubling of efficiency of electric and natural gas end uses. However, since the Applicants submitted their Application for Line 3602 in September 2015, we do not see any solid rationale to delay this proceeding a year or more until the publication of the CEC (California Energy Commission) 2018 Integrated Policy Report or until the Air Resources Board and

CEC complete their process to determine how these laws will be implemented. Once we complete Phase 1 of this proceeding, we can determine whether it is prudent to revisit these issues at a later stage of the proceeding.

Moving forward, testimony should focus on factual and policy issues according to Questions 1 through 18 and as reflected in the Ordering Paragraphs of this ruling. Purely legal issues, if any, should not be addressed in testimony, but should be addressed in briefs. While a party may indicate in its testimony that it intends to raise a particular legal issue, parties do not need to do so, and parties may raise a legal issue in briefs without having addressed that issue in testimony. With this approach, we will conduct briefs after the first set of evidentiary hearings, which will inform a Phase 1 decision. Because parties make a good case that a number of questions involve a mix of legal/policy/and disputed material facts, testimony and hearings are necessary on these issues. (See Scoping Memo Section “7. Need for Hearing”.) Having two distinct phases with two separate decisions and two sets of accompanying briefs following hearings, may take more time to resolve. But the overall process may be more efficient as resolution of *all* Phase 1 issues, both safety and non-safety-related ones, will provide guidance to the CEQA process.

2) Request to focus Phase 1 to include only [“threshold”] questions relating to short-term safety of Line 1600; Joint Intervenors also recommend leaving Questions 16 and 17 to Phase 2 because they address, in part, need and other issues aside from short-term safety.

We see no compelling reason to delay questions 16 and 17 to Phase 2 of the proceeding since they address in part, “need” and “other issues aside from short-term safety.” As stated in the Scoping Memo, addressing the need determination in Phase 1 may inform CEQA review but in no way predetermines the outcome of the Commission’s CEQA process. Should our Phase 1 process

determine that there may be need for a project that meets the project objectives,⁷ any record developed in Phase 1 will be carried forward into the environmental review document. As demonstrated in other Commission proceedings, there may be some potential efficiency litigating the issue of “threshold issues” in advance of CEQA review.⁸ However, especially in large proceedings, efficiency is lost if we concurrently undertake CEQA review. While lead agencies may engage in some analysis pre-CEQA, we acknowledge that careful coordination of issues is warranted as the proceeding evolves.

3) Request to add several questions related to the safety of Line 1600.

We appreciate the Joint Intervenors’ request to add “Supplemental Line 1600 Safety” questions to the current list of Scoping Memo questions.⁹ According to the Scoping Memo, the assigned Commissioner, in cooperation with the assigned ALJ, may adjust the scope of the proceeding as new developments arise or as new information becomes available, especially early in the proceeding.

After careful review of the questions, we believe adding Joint Intervenor

⁷ We cannot say, definitively, that a project *is* needed without first completing CEQA review, because that risks predetermining – or at least appearing to predetermine – the outcome of that review. (See *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116 [holding that lead agencies should not commit themselves to a particular course of action before completing CEQA review]; *Natural Res. Def. Council, Inc. v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 271 [explaining that CEQA should not be reduced “to a process whose result will be largely to generate paper, to produce an EIR that describes a journey whose destination is already predetermined.”].) But we have, in the past, denied applications before undergoing CEQA review when the applications showed, on their face, that the proposed project was unnecessary. (See, e.g., D.16-07-015 [North-South]; D.02-12-066 [Valley-Rainbow].) After all, it is pointless to assess the environmental impacts of a project that is clearly *not* needed. In all other cases – indeed, the vast majority – the best we can say before certifying the EIR is that the project *may* be needed, with the final answer to await the EIR.

⁸ For example, as Applicants point out, see A.15-09-010 Scoping Memo in which the assigned Commissioner and assigned ALJ ask for Opening and Reply Briefs on “threshold issues.”

⁹ Joint Motion at 8.

Questions A and C is acceptable. However, as highlighted in the list below, we believe that Joint Intervenor Question B overlaps with Scoping Memo Question 11, and Question D overlaps with Scoping Memo Question 12.

Supplemental Line 1600 Safety Questions (to follow Question 18 in Scoping Memo):¹⁰

Supplemental Question A: (Add to Scoping Memo Questions)

If de-rated to 320 psig or less, is Line 1600 a transmission line or a distribution line as defined by federal safety requirements? If Line 1600 can be called a distribution line in compliance with 49 Code of Federal Regulations Section 192.3 (Definitions), what are all of the steps that must be taken to do so? What are the implications of SoCalGas/SDG&E operating and conducting safety assessments of Line 1600 as a distribution line rather than a transmission line?

Supplemental Question B: (Do not add to Scoping Memo Questions; Overlaps with Scoping Memo Question 11)

If Line 1600 were pressure tested with gas to validate a maximum allowable operating pressure of up to 30 percent of Specified Minimum Yield Strength (SMYS), would this comply with the requirements of 49 CFR 192, Subpart J (Pressure Testing), and specifically Sections 192.507 and 192.503, Public Utilities Codes §§ 950 and 958, and General Order 112-F? What records is SoCalGas/SDG&E required to maintain if tested in this manner?

Supplemental Question C: (Add to Scoping Memo Questions)

What limitations are there to pressure testing a pipeline? How long does pressure testing reasonably ensure fitness for service of a pipeline?

¹⁰ To avoid confusion, we are not changing the numbering system associated with the long list of questions in the original Scoping Memo.

Question D: (Do not add to Scoping Memo Questions; Overlaps with Scoping Memo Question 11)

Is there a minimum pressure at which Line 1600 can safely operate?

As stated previously, gathering some of this information in a first phase of this proceeding will not only address immediate safety issues but also help guide the joint CEQA/NEPA process by providing a more clear reliability standard of review and greater understanding of purported need.

4) Require Sempra Utilities to cure the deficiencies in the new Phase 2 portion of their application before moving with scheduling on issues unrelated to Line 1600 safety.

We see no reason to delay obtaining information related to Questions 1-7 and 11-15. (*See Item One above.*) As stated in the Scoping Memo, we agree with the Joint Intervenors' observations that the Applicants should provide the missing information that should constitute the foundation of any application consistent with Rule 3.1 pertaining to CPCN "Construction or Extension of Facilities Requirements."¹¹ As stated in the Scoping Memo, we cannot evaluate a \$639 million project without sufficient information.

2. Modified Phase 1 Schedule

As discussed, we will eliminate preliminary briefs and reply briefs originally due December 19, 2016 and January 23, 2017. We will also take evidence on related policy/factual issues that may be subject to dispute on long-term need, planning assumptions, standards of review, Otay Mesa Supply

¹¹ The Original and Amended Application have never been deemed "complete," which was an original condition to be met before the scheduling of the prehearing conference. For a more complete discussion of Rule 3.1 requirements, *see* "Joint Assigned Commissioner and Administrative Law Judge's Ruling Requiring an Amended Application and Seeking Protests, Responses, and Replies," issued January 22, 2016 at 15-18.

and Line 1600 Safety Compliance in advance of the joint environmental document that may be subject to dispute (Issues 1-18). We are sympathetic to parties' comments that additional testimony will require more time. A modified schedule allows for some additional time to resolve the original Scoping Memo's dates for intervenor testimony, rebuttal testimony, and a hearing, but allows parties to brief issues immediately after the development of a Phase 1 record through the hearing process. Taking evidence on related factual issues that may be subject to dispute will occur in advance of the issuance of the joint environmental document.

It is premature to determine the schedule for a Phase 2 of this proceeding. Therefore, the schedule for Phase 2 will be established at a PHC following the conclusion of a Phase 1 decision.

The following Modified Phase 1 Schedule is adopted here and may be modified by the assigned Commissioner and/or ALJ as required to promote efficient and fair resolution of the application.

Modified Phase One Schedule

Actions / Milestones		Date
Formal Proceeding / Energy Division Staff		
✓	Application and PEA Filed	9/30/15
✓	Responses and Protests to Amended Application	10/30/15
✓	Reply to Responses and Protests	11/12/15
✓	<i>PEA Deficiency Letter No. 1 to Applicants</i>	10/30/15
✓	<i>Applicants' Responses</i>	11/30/15 12/21/15
✓	<i>PEA Deficiency Letter No. 2 to Applicants</i>	12/30/15
✓	<i>Applicants' Responses</i>	1/11/16 2/12/16 2/16/16

✓	Joint Ruling Requiring an Amended Application	1/22/16
✓	Amended Application and PEA Filed with Testimony and Cost-Effectiveness Analysis	3/21/16
✓	Responses and Protests to Amended Application	4/21/16
✓	Reply to Responses and Protests	4/29/16
✓	<i>PEA Deficiency Letter No. 3 To Applicants</i>	4/29/16
✓	<i>Applicants' Responses</i>	5/26/16 8/11/16
✓	<i>Cost-Effectiveness Analysis Update and Data Requests to Applicants</i>	6/7/16
✓	<i>Applicants' Responses</i>	7/15/16 8/5/16 9/9/16 9/30/16
✓	ORA Motion to Dismiss Application	6/17/16
✓	Party Responses	7/1/16 7/5/16
✓	Ruling Denying Motion to Dismiss without Prejudice	7/18/16
✓	<i>PEA Deficiency Letter No. 4 to Applicants "Clarification Email"</i>	6/22/16
✓	<i>Applicants' Responses</i>	7/22/16
✓	<i>PEA Deemed Complete</i>	8/23/16
	<i>Applicant Responses to PEA Deemed Complete Letter</i>	10/7/16 10/14/16
✓	Ruling Establishing Prehearing Conference Date	8/15/16
✓	Prehearing Conference	9/22/16
✓	Scoping Memo Published	November 4, 2016
	PHASE ONE	
	Long-term Need, Planning Assumptions, Standards of Review, and Short-term Line 1600 Safety Compliance (Issues 1-18)	
	Applicant Supplemental Testimony	February 20, 2017
	Intervenor Testimony	April 17, 2017
	Rebuttal Testimony	May 22, 2017
	Cross Examination Estimates (emailed to ALJ and service list) May?	Late May 2017
	Evidentiary Hearings	June 12-16, 2017

Opening Briefs	July 17, 2017
Reply Briefs	July 31, 2017
Requests for Final Oral Argument	Concurrent with Reply Briefs for all scheduled briefings
Proposed Decision	After submittal of reply briefs
	<i>CEQA/NEPA Public Scoping</i>
	April 2017
	<i>Draft EIR/EA or EIS circulated</i>
	August 2018 ¹²
PHASE TWO	
Need, Purpose, Design, Cost, Proposed Line 3602 Safety Compliance, Alternatives and Cost Effectiveness, Market and Rate Impacts, Affiliate Transaction Rules, Environmental Impacts, Cost Cap¹³ (Issues 19-42)	To commence tentatively after completion of draft EIR
Pre-Hearing Conference	TBD
Second Scoping Memo	TBD
Applicant Opening Testimony	TBD
Intervenor Testimony	TBD
Rebuttal Testimony	TBD
Cross-examination estimates (emailed to ALJ and service list)	TBD
Evidentiary Hearings	TBD
	<i>Final EIR/EA or EIR/EIS Completed</i>
Opening Briefs Due	TBD
Reply Briefs Due	TBD
Requests for Final Oral Argument	Concurrent with Reply Briefs for

¹² Anticipated date established in CEQA/NEPA agency MOU signed on October 19, 2016.

¹³ Based on the vast scope and complexity of issues, there may be more than one deadline for prepared testimony, rebuttal testimony and evidentiary hearings. For example, the issue of “infeasibility” (Issue #39) could be deferred to a later stage in the proceeding after other CEQA/NEPA related issues are addressed.

¹⁴ Timeline for development of the final environmental document subject to change according to ongoing status of the proceeding, extent of public comment, and Energy Division priorities.

		all scheduled briefings
	Proposed Decision	[no later than 90 days after submission]
	Commission Decision and Certification of Environmental Document	Commission decision [no sooner than 30 days after the proposed decision]

The assigned Commissioner or assigned ALJ may continue to modify this schedule as necessary to promote the efficient management and fair resolution of this proceeding.

IT IS RULED that:

1. Preliminary opening and reply briefs on “threshold issues,” originally due December 19, 2016 and January 23, 2017, are no longer required, and all associated policy/factual issues addressed in Scoping Memo Questions 1 through 18 are subject to testimony, evidentiary hearings, followed by briefs.

2. The modified schedule and two additional Line 1600 safety-related Supplemental Questions A and C (“C” now renamed “B” below), as proposed by the Joint Intervenors, are adopted and shall be included in supplemental testimony.

A. If de-rated to 320 psig or less, is Line 1600 a transmission line or a distribution line as defined by federal safety requirements? If Line 1600 can be called a distribution line in compliance with 49 Code of Federal Regulations Section 192.3 (Definitions), what are all of the steps that must be taken to do so? What are the implications of SoCalGas/SDG&E operating and conducting safety assessments of Line 1600 as a distribution line rather than a transmission line?

- B. What limitations are there to pressure testing a pipeline?
How long does pressure testing reasonably ensure fitness for service of a pipeline?

3. In supplemental testimony, San Diego Gas & Electric Company and Southern California Gas Company shall file and serve “missing information” pertaining to Rule 3.1 of the Commission’s Rules of Practice and Procedure pertaining to Certificate of Public Convenience and Necessity “Construction or Extension of Facilities Requirements,” including the following information:

- A. Ten-year forecasted (maximum daily and annual daily average) volumes in the area to be served by the proposed Line 3602; including information on the quality of gas broken down by customer type (e.g., core, non-core commercial and industrial, and non-core electric generation);
 - B. Ten-year historic monthly volumes through Line 1600; and
 - C. Ten-year historic daily and annual maximum volumes through Line 1600.
4. Any outstanding requests not yet ruled on are hereby deemed denied.

Dated December 22, 2016, at San Francisco, California.

/s/ LIANE M. RANDOLPH

Liane M. Randolph
Assigned Commissioner

/s/ COLETTE E. KERSTEN

Colette E. Kersten
Administrative Law Judge