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

In the Matter of the Application of DCR TRANSMISSION, LLC for a Certificate of Public Convenience and Necessity for the Ten West Link Project.

Application 16-10-012

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER  
AND JOINT RULING WITH ADMINISTRATIVE LAW JUDGE**

**Summary**

This Scoping Memo and Ruling sets forth the category, issues, need for hearing, schedule, and other matters required by Public Utilities Code Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure.<sup>1</sup>

**1. Background**

On October 12, 2016, DCR Transmission LLC (DCRT or Applicant) filed an Application for a Certificate of Public Convenience and Necessity to build the Ten West Link Project. A prehearing conference (PHC) was set by ruling dated April 27, 2017 but was subsequently reset by ruling dated May 15, 2017. The parties were directed to file PHC statements.

The Applicant, the Office of Ratepayer Advocates (ORA), and The Center for Biological Diversity, Yuma Audubon Society, Maricopa Audubon Society (Conservation Groups) filed PHC statements. On June 2, 2017, the PHC was held

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<sup>1</sup> California Code of Regulations, Title 20, Division 1, Chapter 1; hereinafter, Rule or Rules.

to determine parties, discuss the scope, the schedule, and other procedural matters.

## **2. Scope**

Based on the application and parties' protests, PHC statements, and the discussion at the PHC, the following issues are within the scope of this proceeding:

1. Whether the application meets the requirements of General Order 131-D, Section IX(A)(1) and Rule 3.1 to obtain a certificate of public convenience and necessity;
2. Whether the project serves a present or future need and meets the requirements of Public Utilities (Pub. Util.) Code Section 1001 et seq.;
3. What are the economic and other benefits of the proposed project;
4. Is there no substantial evidence that the project will have a significant effect on the environment? In the alternative, if there is substantial evidence to that effect:
  - a. What are the significant environmental impacts of the proposed project?
  - b. Are there feasible mitigation measures that will eliminate or lessen such impacts?
  - c. As between the proposed project and project alternatives, which is environmentally superior?
  - d. To the extent that the proposed project or project alternatives result in significant and unavoidable impacts, are there overriding considerations that warrant Commission approval of the proposed project or project alternatives?
  - e. The environmental impacts of the proposed project and alternative routes, including impacts to the King of Arizona National Wildlife Refuge (KOFA);

5. Whether the project is necessary for compliance or to facilitate compliance with the Renewables Portfolio Standard;
6. What is the maximum reasonable and prudent cost for the proposed project and environmentally superior alternative if approved;
7. Whether the Commission should grant DCRT exemptions from certain affiliate transaction rules and reporting requirements;
8. Whether the Environmental Impact Statement (EIS) is sufficient to meet the requirements for the California Environmental Quality Act;
9. Whether DCRT should provide a guarantee of payments for ORA's consultants and the costs of intervenor compensation; and
10. Whether the application raises any safety concerns or considerations.

### **3. Categorization**

The Commission in Resolution ALJ 176-3387 issued on October 27, 2016, preliminarily determined that the category of the proceeding is ratesetting. This scoping memo confirms the categorization. Anyone who disagrees with this categorization may file an appeal of the categorization no later than ten days after the date of this scoping ruling. (*See* Rule 7.6.)

### **4. Need for Hearing**

The Commission in Resolution ALJ 176-3387 also preliminarily determined that hearings are not required. After a review of the pleadings and discussion with parties at the PHC, we find that hearings are necessary. A determination of public convenience and necessity involves material factual issues. To the extent that they are contested, evidentiary hearings are needed on these issues. The issue of the maximum reasonable and prudent cost for the proposed project or

alternative, if approved, involves questions of material fact. To the extent that they are contested, evidentiary hearings are needed on these issues.

**5. Ex Parte Communications**

In a ratesetting proceeding such as this one, *ex parte* communications with the assigned Commissioner, other Commissioners, their advisors and the Administrative Law Judge (ALJ) are only permitted as described at Pub. Util. Code § 1701.3(c) and Article 8 of the Rules.

**6. Intervenor Compensation**

Pursuant to Pub. Util. Code § 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by July 3, 2017, 30 days after the PHC.

A second PHC will occur after Applicant provides the Bureau of Land Management's (BLM) EIS. Customers who have not previously filed a notice of intent to claim compensation must file a notice of intent no later than 30 days after the second PHC.

**7. Assigned Commissioner**

Liane Randolph is the assigned Commissioner and Katherine Kwan MacDonald is the assigned ALJ. Pursuant to Pub. Util. Code § 1701.3 and Rule 13.2, ALJ MacDonald is designated as the Presiding Officer.

**8. Filing, Service and Service List**

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocols set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Parties are reminded, when serving copies of documents, the document format must be consistent with the requirements set forth in Rules 1.5 and 1.6. Additionally, Rule 1.10 requires service on the judge of both an electronic and a paper copy of filed or served documents. Parties are directed to serve documents and pleadings on the assigned Commissioner using electronic mail only. Parties shall not serve paper copies of documents on the assigned Commissioner.

Rules 1.9 and 1.10 govern service of documents only and do not change the Rules regarding the tendering of documents for filing. Parties can find information about electronic filing of documents at the Commission's Docket Office at [www.cpuc.ca.gov/PUC/efiling](http://www.cpuc.ca.gov/PUC/efiling). All documents formally filed with the Commission's Docket Office must include the caption approved by the Docket Office and this caption must be accurate.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov) to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

## **9. Discovery**

Discovery may be conducted by the parties consistent with Article 10 of the Commission's Rules. Any party issuing or responding to a discovery request shall serve a copy of the request or response simultaneously on all parties. Electronic service under Rule 1.10 is sufficient, except Rule 1.10(e) does not apply

to the service of discovery and discovery shall not be served on the ALJ. Deadlines for responses may be determined by the parties. Motions to compel or limit discovery shall comply with Rule 11.3.

**10. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

**11. Schedule**

The parties proposed very different schedules for this proceeding. DCRT proposed that testimony be filed prior to completion of the draft EIS and to then proceed with evidentiary hearings while waiting for completion of the final EIS. Applicant's proposed schedule anticipated providing the final EIS after submission of reply briefs. Both ORA and the Conservation Groups requested that the schedule for submission of testimony and hearings be set after completion of the environmental review to allow for full consideration of viable alternatives.

We agree evidentiary hearings will be more effective and efficient after the environmental review is completed. As a result, the schedule provided below is an outline of our anticipated schedule. We will hold a second PHC to refine the schedule when DCRT provides the draft EIS.

The adopted schedule is:

<b>EVENT</b>	<b>DATE</b>
First Prehearing Conference	June 2, 2017
Draft EIS	October 2017
Second Prehearing Conference	TBD
Opening Testimony Served -Applicant	30 days after Draft EIS
Opening Testimony Served - Intervenors	90 days after Applicant Testimony
Reply Testimony Served - Concurrent	60 days after Intervenor Opening Testimony
Final EIS	TBD
Cross-Examination estimates served	30 days after Reply Testimony
Evidentiary Hearings	Date and time TBD Commission Courtroom 505 Van Ness Avenue San Francisco, California
Opening Briefs	30 Days after Evidentiary Hearings
Reply Briefs/Record submitted	15 Days after Opening Briefs
Request for Final Oral Argument	Concurrent with Reply
Comments on Proposed Decision	Within 20 Days of Service of the Proposed Decision
Replies to Comments on Proposed Decision	Within 5 Days of Service of Comments
Anticipated Commission Meeting/Decision	30 Days after but no later than 60 days after the Proposed Decision

The assigned Commissioner or assigned ALJ may modify this schedule as necessary to promote the efficient management and fair resolution of this proceeding. The proceeding will be submitted upon the filing of reply briefs, unless the assigned Commissioner or the ALJ directs further evidence or argument.

In order to fully evaluate this application, the Applicant must provide the environmental review for the Commission's evaluation and use in adjudicating this application. Although the Applicant is actively working with BLM to finish the environmental review the date for completion of the draft EIS has changed from April 2017 to October 2017. Due to the need for the EIS, the complexity and number of issues in this proceeding, it is the Commission's intent to complete this proceeding within 24 months of the date this Scoping Memo is filed. This deadline may be extended by order of the Commission. (Public Utilities Code Section 1701.5(b).)

If there are any workshops in this proceeding, notice of such workshops will be posted on the Commission's Daily Calendar to inform the public that a decision-maker or an advisor may be present at those meetings or workshops. Parties shall check the Daily Calendar regularly for such notices.

## **12. Common Briefing**

Consistent with scoping memo objectives, parties must use a common outline for briefs addressing the issue except for those issues which may settle by all parties. The outline is to be developed jointly by the parties. Parties shall include a Table of Authorities in briefs which lists the location of all sources cited in the brief. The parties may bring any unresolved disputes regarding the outline to the attention of the ALJ before the end of evidentiary hearings.



### **13. Settlement and Alternative Dispute Resolution**

While the schedule does not include specific dates for settlement conferences it does not preclude parties from meeting at other times provided notice is given consistent with our Rules.

The Commission offers Alternative Dispute Resolution (ADR) services consisting of mediation, facilitation, or early neutral evaluation. Use of ADR services is voluntary, confidential, and at no cost to the parties. Trained ALJs serve as neutrals. The parties are encouraged to visit the Commission's ADR webpage at <http://www.cpuc.ca.gov/adr/>, for more information.

If requested, the assigned ALJ will refer this proceeding, or a portion of it, to the Commission's ADR Coordinator. Alternatively, the parties may contact the ADR Coordinator directly at [adr\\_program@cpuc.ca.gov](mailto:adr_program@cpuc.ca.gov). The parties will be notified as soon as a neutral has been assigned; thereafter, the neutral will contact the parties to make pertinent scheduling and process arrangements. Alternatively, and at their own expense, the parties may agree to use outside ADR services.

### **14. Final Oral Argument**

A party in a ratesetting proceeding in which a hearing is held has the right to make a Final Oral Argument before the Commission, if the argument is requested within the Reply Brief. (Rule 13.13.)

#### **IT IS RULED:**

1. The category of this proceeding is ratesetting. Appeals as to category, if any, must be filed and served within ten days from the date of this scoping memo.
2. The scope of the issues for this proceeding is as stated in "Section 2. Scope" of this ruling.

3. Hearings are necessary but are not scheduled at this time.

4. Administrative Law Judge Katherine Kwan MacDonald is designated as the Presiding Officer.

5. The schedule for the proceeding is set in "Section 11. Schedule" of this ruling. The assigned Commissioner or Presiding Officer may adjust this schedule as necessary for efficient management and fair resolution of this proceeding.

6. With limited exceptions that are subject to reporting requirements, *ex parte* communications are prohibited. (*See* Public Utilities Code § 1701.3(c); Article 8 of the Commission's Rules of Practice and Procedure.)

7. A party shall submit request for Final Oral Argument in its reply briefs, but the right to Final Oral Argument ceases to exist if hearing is not needed.

Dated August 4, 2017, at San Francisco, California.

/s/ LIANE M. RANDOLPH

Liane M. Randolph  
Assigned Commissioner

/s/ KATHERINE MacDONALD

Katherine Kwan MacDonald  
Administrative Law Judge