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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
California Resources Production
Corporation for a Certificate of Public
Convenience and Necessity to Operate
as a Gas Corporation in the State of
California.

Application 23-07-008

ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

This scoping memo and ruling sets forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities Code section 1701.1 and Article 7 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure (Rules).

1. Procedural Background

On July 10, 2023, the California Resources Production Corporation (CRPC) filed Application (A.) 23-07-008 requesting a Certificate of Public Convenience and Necessity (CPCN) to operate the Union Island Pipeline (UI Pipeline) as a public gas utility corporation within California. The application states that CRPC has operated the UI Pipeline to transport natural gas for CRPC and CRPC affiliates and for third-party customers on a contractual basis since 2013.¹ CRPC states that, if the application is approved, it intends to commit the UI Pipeline to public use and to offer transportation services to third-party producers of natural gas at the Union

¹ Application at 5. During the prehearing conference (PHC) held on October 3, 2023, CRPC stated that the UI Pipeline was not transporting natural gas as of that date. October 3, 2023 PHC Transcript at 28.

Island Gas, French Camp Gas, Lathrop Gas, and Brentwood fields only on an open-access, tariffed basis.

On August 22, 2023, the City of Antioch and the City of Brentwood (the Cities) jointly filed a protest of the application. On August 25, 2023, the Public Advocates Office (Cal Advocates) filed a motion for party status, which the assigned Administrative Law Judge (ALJ) granted on August 31, 2023. On August 31, 2023, CRPC filed a reply to the joint protest.

On September 15, 2023, the assigned ALJ issued a ruling setting a prehearing conference (PHC) date and directing that PHC statements filed in advance of the PHC. On September 26, 2023, the Cities filed a joint PHC statement, and CRPC filed a PHC statement.

A PHC was held on October 3, 2023, to address the issues of law and fact, determine the need for a hearing, set the schedule for resolving the matter, and address other matters as necessary. During the PHC, the assigned ALJ directed CRPC to file additional information by October 16, 2023, regarding Commission Rules 3.1(c) and 3.1(k)(1) and to answer the question, "which obligations of a public utility is CRPC proposing to adhere to?" On October 16, 2023, CRPC filed the additional information ordered by the assigned ALJ during the PHC.

After considering the application, the Cities joint protest, CRPC's reply, the PHC statements, discussion at the prehearing conference, and CRPC's response to ALJ questions, I have determined the issues and initial schedule of the proceeding to be set forth in this scoping memo.

2. Issues

The issues to be determined or otherwise considered in this proceeding are:

The threshold issue to be considered is:

- (1) Whether CRPC is a public utility gas corporation as defined by Public Utilities Code sections 216 and 222 that should be

granted a certificate of public convenience and necessity to operate the UI Pipeline.

The question of whether CRPC is a public utility is the central threshold issue in this case. Public Utilities Code Section² 216(a)(1) defines “public utility” to “include every common carrier... pipeline corporation [and] gas corporation ... where the service is performed for, or the commodity delivered to, the public or any portion thereof.” In its application and response to the Cities’ protest, CRPC emphasizes that it will only provide transportation services for third-party producers of natural gas located in the Union Island, French Camp Gas, Lathrop Gas, and Brentwood fields. CRPC will transport the gas to the Los Medanos transfer station, which is owned by Chevron Pipeline Company and via which Chevron transports the gas to its refinery in Richmond California.³ Although not described, it appears that the raw transported gas is then further processed prior to being utilized in Chevron’s refining process. In other words, the question arises whether Chevron is an “end-user” customer of the delivered gas because the gas must undergo further processing before use. Instead, the UI Pipeline may be a gathering line from production of gas to a gas processor.⁴

The importance of this issue is reinforced by the lack to date of any Pacific Gas and Electric Company (PG&E) comment on this application, even though PG&E maintains exclusive rights to provide natural gas transmission and distribution services to end-user customers within its service territory.⁵ CRPC asserts that “the UI pipeline is in direct competition with the PG&E system.”⁶ Additionally, CRPC

² Hereafter, all references to code are to the Public Utilities Code unless otherwise specified.

³ Application at 2.

⁴ See D.89-12-016, 34 CPUC2d 55, 1989 Cal. PUC LEXIS 678 at * 17. See also 15 U.S.C. § 717(b) (2023) Natural Gas Act, Natural Gas Act § 1(b); and 15 USC § 3431(a)(1)(A).

See D.99-11-023.

⁶ Application at 14-15.

clarifies that the delivered gas has a lower British Thermal Units (Btu) content than that required for transport using PG&E's natural gas system, consistent with unprocessed natural gas.⁷

Accordingly, the first step in this proceeding will be to direct the parties⁸ to brief the threshold issue and address the following threshold issue and questions:

(1) Whether CPRC is a "public utility":

- a. Is CPRC conducting business in a manner and/or holding itself out to the public as a "public utility," as defined by Section 216(a)(1) and cases interpreting the statute?
- b. Is CPRC operating a gathering pipeline? If so, does the Commission lack jurisdiction over CPRC on that basis?
- c. Is CPRC infringing upon PG&E's exclusive service territory?

Depending on how the threshold issue (1) above is resolved in this proceeding, it is possible that I will revisit the scope to consider additional potential issues in this proceeding, as appropriate, including some or all of the following questions and other issues:

- (1) Whether it is in the public interest to exempt CRPC from the requirements of Public Utilities Code section 818 through 851, which require Commission approval before a public utility issues stock payable at periods of more than 12 months (Section 818), engages in certain securities transactions (Section 830), or transfers certain utility property (Section 851);
- (2) Whether CRPC should be granted market-based rate authority because it lacks market power with respect to the services it intends to offer;
- (3) Whether, in the event that CRPC is granted market-based rate authority, it should be exempted from the reporting

⁷ Application at 5.

⁸ PG&E is not yet a party to this proceeding, but we would appreciate PG&E's intervention and response to these questions, particularly sub-question (c).

requirements set forth in General Order 65-A, General Order 77- K, and General Order 104-A;

- (4) Whether granting the requested relief impacts environmental and social justice communities, including the extent to which granting the requested relief impacts achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan;
- (5) Whether CRPC qualifies as a public utility gas corporation entitled to a CPCN when the franchise agreements permitting it to run the UI Pipeline through the Cities have expired and both Cities have declined to renew the franchises;
- (6) Whether CRPC qualifies as a public utility eligible for a CPCN to operate the UI Pipeline when the UI Pipeline is available to a small group of private companies for the purpose of transporting natural gas to a single corporation;
- (7) Whether the UI Pipeline provides essential utility service and whether it is or will be dedicated to public use;
- (8) Whether CRPC's Application is in the public interest; and
- (9) Whether a private company may be granted public utility status when it seeks such status for the primary purpose of obtaining the power to initiate eminent domain actions to take public property to continue its business as usual, and specifically to circumvent decisions of democratically-elected government entities not to permit it to use their public rights-of-way.

3. Need for Evidentiary Hearing

The Cities raised a number of contested, material issues of fact pertaining to the threshold issue (1) as well as other potential issues (2) and (6) above, in their joint protest, PHC statement and during the PHC.

Depending on the resolution of threshold issue (1) above, evidentiary hearing may be needed. To error on the side of caution and for the time being, it is determined that an evidentiary hearing is necessary.

4. Schedule

The following schedule is adopted here and may be modified by the assigned ALJ as required to promote the efficient and fair resolution of the application:

Event	Date
Opening briefs on threshold questions (1a-c) above.	30 days from issuance of Scoping Memo
Reply briefs on threshold questions (1a-c) above.	15 days from the date Opening Briefs are due.
Proposed decision on issue (1)	Q4 2023 or Q1 2024
Discovery Period	TBD
Concurrent Opening Testimony served	TBD
Concurrent Rebuttal testimony served	TBD
Last Date to Move for Evidentiary Hearing	TBD
Status conference	TBD
Amended Scoping Memo	TBD
Evidentiary hearing	TBD
Opening briefs	TBD
Reply briefs	TBD
Proposed decision on remaining issues, as warranted, TBD	TBD

The proceeding will stand submitted, on the threshold issue (1), upon the filing of reply briefs in late 2023 unless the ALJ requires further evidence or argument. The schedule for this proceeding will be revisited along with the scoped issues after the Commission's resolution of issue the threshold number (1). At this time, it is expected that the proceeding will be resolved within 18 months as required by Public Utilities Code section 1701.5.

5. Alternative Dispute Resolution (ADR) Program and Settlements

The Commission's Alternative Dispute Resolution (ADR) program offers mediation, early neutral evaluation, and facilitation services, and uses ALJs who have been trained as neutrals. At the parties' request, the assigned ALJ can refer this proceeding to the Commission's ADR Coordinator. Additional ADR information is available on the Commission's website.⁹

Any settlement between parties, whether regarding all or some of the issues, shall comply with Article 12 of the Rules of Practice and Procedure and shall be served in writing. Such settlements shall include a complete explanation of the settlement and a complete explanation of why it is reasonable in light of the whole record, consistent with the law and in the public interest. The proposing parties bear the burden of proof as to whether the settlement should be adopted by the Commission.

6. Category of Proceeding and Ex Parte Restrictions

This ruling confirms the Commission's preliminary determination¹⁰ that this is a ratesetting proceeding. Accordingly, ex parte communications are restricted and must be reported pursuant to Article 8 of the Rules.

7. Public Outreach

Pursuant to Public Utilities Code section 1711(a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's monthly newsletter that is served on communities and business that subscribe to it and posted on the Commission's website.

⁹ See D.07-05-062, Appendix A, § IV.O.

¹⁰ Resolution ALJ-176-3531 at 2.

8. Intervenor Compensation

Pursuant to Public Utilities Code section 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 November 2, 2023, 30 days after the PHC.

9. Response to Public Comments

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such response using the “Add Public Comment” button on the “Public Comment” tab of the online docket card for the proceeding.

10. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission’s procedures or 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 866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

11. 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 1.4¹¹.

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

¹¹ The form to request additions and changes to the Service list may be found at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/additiontoservicelisttranscriptordercompliant.pdf>

This proceeding will follow the electronic service protocol 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. Rule 1.10 requires service on the ALJ of both an electronic and a paper copy of filed or served documents.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

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 to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

The Commission encourages those who seek information-only status on the service list to consider the Commission's subscription service as an alternative. The subscription service sends individual notifications to each subscriber of formal e-filings tendered and accepted by the Commission. Notices sent through subscription service are less likely to be flagged by spam or other filters. Notifications can be for a specific proceeding, a range of documents and daily or weekly digests.

12. Receiving Electronic Service from the Commission

Parties and other persons on the service list are advised that it is the responsibility of each person or entity on the service list for Commission proceedings to ensure their ability to receive emails from the Commission. Please add "@cpuc.ca.gov" to your email safe sender list and update your email screening practices, settings and filters to ensure receipt of emails from the Commission.

13. Assignment of Proceeding

Karen Douglas is the assigned commissioner and Cathleen A. Fogel is the assigned ALJ and presiding officer for the proceeding.

IT IS RULED that:

1. The scope of this proceeding is described above and is adopted.
2. The schedule of this proceeding is set forth above and is adopted.
3. Evidentiary hearing is needed.
4. The presiding officer is Administrative Law Judge Cathleen A. Fogel.
5. The category of the proceeding is ratesetting.

Dated November 6, 2023, at San Francisco, California.

/s/ KAREN DOUGLAS

Karen Douglas
Assigned Commissioner