

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



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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.

A.23-07-008

(Filed July 10, 2023)

**REPLY OF CALIFORNIA RESOURCES PRODUCTION CORPORATION TO
ADMINISTRATIVE LAW JUDGE'S JANUARY 11, 2025 RULING**

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I. INTRODUCTION

California Resources Production Corporation (“CRPC”) submits the following reply brief pursuant to the January 11, 2025 *Email Ruling Regarding Applicant California Resources Production Corporation’s Motion to Amend Application 23-07-008* (“January 11 Ruling”).

As explained below, CRPC’s Motion to Amend (“Motion”) filed January 3, 2025 should be granted for the following reasons:

- The Motion complies with the California Public Utilities Commission (“CPUC” or “Commission”) Rules of Practice and Procedure, Rule 1.12, because it is irrelevant to any issue currently scoped in the initial phase of this proceeding, as set forth in the November 6, 2023 initial Scoping Memo and Ruling (“Initial Scoping Memo”);
- Even were Rule 1.12 implicated, Rule 1.2 directs that the Commission’s Rules of Practice and Procedure should be “liberally construed to secure just, speedy, and inexpensive determination of the issues presented,” and that deviations are permitted for “good cause.” The Commission has the authority to allow amendment at any stage of the proceeding, including after issuance of a scoping memo, and has done so in the past when warranted; and
- Judicial economy and the conservation of both Commission and party resources weigh heavily in favor of allowing amendment, rather than requiring dismissal and the filing of a new application raising issues identical to those set forth in the Initial Scoping Memo.

II. PROCEDURAL HISTORY

On November 6, 2023, Assigned Commissioner Douglas issued the Initial Scoping Memo in this proceeding. The Initial Scoping Memo identified a single threshold issue: (1) whether CRPC is a “public utility.” The Initial Scoping Memo identified three specific questions that it directed the parties to brief, related to that issue. Regarding the operation of the Union Island Pipeline:¹

- Is CRPC 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?
- Is CRPC operating a gathering pipeline? If so, does the Commission lack jurisdiction over CRPC on that basis?
- Is CRPC infringing upon Pacific Gas and Electric Company’s (“PG&E”) exclusive service territory?

The Initial Scoping Memo went on to note that the Commission will “revisit the scope to consider additional potential issues in this proceeding, as appropriate.”² Presumably, to the extent that the Commission determines that CRPC is conducting business or holding itself out as a “public utility,” and is not operating a gathering pipeline or infringing on PG&E’s service territory, the proceeding will proceed to a second phase to address additional questions concerning whether CRPC would qualify as a public utility and how it would be regulated.

Pursuant to the Initial Scoping Memo, parties submitted opening briefs on the three threshold questions outlined above on December 6, 2023, and reply briefs on December 21, 2023. To be clear, the first question focused on whether the Union Island Pipeline had been dedicated to public use as required under Commission precedent to qualify as a public utility.³

¹ Initial Scoping Memo at 4.

² *Id.*

³ See *In re PG&E Co.*, 76 CPUC 134 (1973).

The City of Antioch and City of Brentwood (the “Cities”), the only parties opposing CRPC’s application, expressly focused on that issue in their joint opening brief,⁴ as did the other parties to the proceeding, including CRPC itself.

The Initial Scoping Memo expressly did not include in the initial threshold questions the question of CRPC’s continued title to and operation of the Union Island Pipeline. The Initial Scoping Memo identifies the following issue for potential determination *after* the threshold question is resolved: “Whether CRPC qualifies as a public utility gas corporation entitled to a Certification of Public Convenience and Necessity (CPCN) when the franchise agreements permitting it to run the Union Island Pipeline through the Cities have expired and both Cities have declined to renew the franchises.”⁵ The Initial Scoping Memo also reserved for consideration in a future phase other issues associated with how and to what extent the Commission would regulate the Union Island Pipeline, including whether CRPC would be exempt from certain regulations and reporting requirements and whether CRPC should be granted market-based rate authority.

The Motion is closely tied to these subsequent issues that the Commission has not yet formally scoped. As set forth in the Motion, CRPC assigned the Union Island Pipeline to an affiliate because it would provide greater clarity around the Commission’s regulation of the Union Island Pipeline. CRPC engages in numerous other activities not within the jurisdiction of the Commission, and locating the public utility services within a single affiliate would simplify the Commission’s regulation of the Union Island Pipeline. It is of course common practice to

⁴ See The City of Antioch and the City of Brentwood’s Joint Opening Brief on Threshold Questions, December 6, 2023 (“Cities’ Opening Brief”), at 3-11 (section II.A. “CRPC is Not a Public Utility because the UI Pipeline Has Not and Will Not Be Dedicated to Public Use”).

⁵ Initial Scoping Memo at 5.

separate regulated and unregulated activities into separate corporate entities to provide regulatory clarity.

III. THE MOTION DOES NOT IMPACT THE THRESHOLD QUESTIONS SET FORTH IN THE INITIAL SCOPING MEMO

As noted in the January 11 Ruling, Rule 1.12(a) of the Commission’s Rules of Practice and Procedure provides that “[a]n amendment is a document that makes a *substantive change to a previously filed document*. An amendment to an application, protest, complaint, or answer *must be filed prior to the issuance of the scoping memo.*”⁶ The January 11 Ruling asks whether the Motion seeks to make a substantive change such that it would be barred by Rule 1.12(a). It does not.

The Motion addresses a corporate reorganization primarily implicating the Commission’s regulatory responsibilities if the Union Island Pipeline is deemed to be a public utility asset. It has no bearing whatsoever on the threshold questions of: (1) whether the Union Island Pipeline has been dedicated to public use, (2) whether the Union Island Pipeline is a gathering line, and (3) whether operation of the Union Island Pipeline infringes upon PG&E’s exclusive service territory. As the Initial Scoping Memo expressly notes, a subsequent scoping memo will be issued to address any issues (such as those raised by the Motion) if this proceeding moves forward after the Commission’s determination of the threshold questions. Thus, the scoping memo relevant to the issues raised in the Motion has not yet been issued. The Motion does not raise any substantive issue relevant to the initial scope. The Motion is therefore not inconsistent with the purpose and intent of Rule 1.12(a), and should be granted.

⁶ See E-Mail Ruling regarding Applicant California Resources Production Corporations Motion to Amend Application 23-07-008, January 11, 2025 (“January 11 Ruling”), at 3 (emphasis in original).

The Cities' Response, though it opposes the Motion, provides a further illustration of why Rule 1.12(a) is inapplicable. The Cities characterize the ongoing litigation concerning the City of Antioch's franchise agreement as one of "ownership"—according to the Cities, if the City of Antioch prevails in the ongoing litigation, CRPC's "lack of ownership in the UI Pipeline within Antioch city limits will be judicially confirmed."⁷ However, it is indisputable that the Initial Scoping Memo reserves the issue of the termination of the franchise agreement to a later stage of the proceeding, and one that is not yet scoped. The Cities also characterize the Motion as an issue of "ownership of the UI Pipeline."⁸ Therefore, the Motion, by the Cities' own characterization, involves the ownership issues that have been reserved for a later stage of the proceeding, and have not yet been scoped.

The Cities' Response also illustrates why there is no need to hold this proceeding in abeyance. The Commission can proceed to resolve the threshold questions now—the status of the franchise agreement, and therefore the status of the ongoing litigation associated with those franchise agreement, is not relevant to that issue. Given that the Motion is not relevant to that threshold questions either, resolution of the Motion, and other issues related to ownership of the Union Island Pipeline, can be scoped into the subsequent phase of the proceeding.

IV. EVEN WERE RULE 1.12(a) IMPLICATED, THE COMMISSION WOULD STILL HAVE THE AUTHORITY TO GRANT THE MOTION

Rule 1.2 of the Commission's Rules of Practice and Procedure states that the Rules "shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented." It authorizes deviation from the Rules in order to effect those ends and for good cause shown. The Commission has exercised that authority in the past to grant a motion for

⁷ The City of Antioch's and the City of Brentwood's Response to Motion of California Resources Production Corporation to Amend its Application, January 31, 2025 ("Cities' Response"), at 6-7.

⁸ *Id.* 7-8.

leave to amend an application or to order an amendment even after the scoping memo has been issued. For example, in Application (“A.”).09-09-022, *In the Matter of the Application of Southern California Edison Company for a Certificate of Public Convenience and Necessity for the Alberhill System Project*, the Commission granted SCE’s motion seeking leave to file a third amended application on May 19, 2023, almost six years after the issuance of the June 19, 2017 scoping memo.⁹ Previously, in that same proceeding, on April 10, 2020, the Commission directed SCE to supplement the proceeding record with additional analyses of alternatives to the project. On May 11, 2020, SCE filed a second amended application in response to this direction—again, well after the scoping memo in that proceeding had issued.

Similarly, in A.18-11-010, *Application of Southern California Gas Company and San Diego Gas & Electric Company for Review of Costs incurred in Executing Pipeline Safety Enhancement Plan*, Southern California Gas Company (“SoCalGas”) and San Diego Gas and Electric (“SDG&E”) filed a motion for leave to amend their application on April 2, 2019, several months after the February 14, 2019 scoping memo was issued. The amended application was accepted for filing on April 10, 2019.

Thus, it is clear that the Commission can, either in response to a motion from an applicant, or sua sponte, direct an amendment post-scoping memo, if good cause exists. Good cause exists here. First, as explained above, the issues raised by the Motion are properly scoped into the next phase of this proceeding, and do not impact the threshold questions identified in the Initial Scoping Memo. Second, as explained below, judicial economy and the conservation of both Commission and party resources weigh heavily in favor of allowing amendment, rather than

⁹ A.09-09-022, E-Mail Ruling Granting Motion Seeking Leave to File Third Amended Application, May 19, 2023.

requiring dismissal and the filing of a new application, which would raise issues identical to those scoped in the Initial Scoping Memo, and already briefed in this proceeding.

V. APPROVAL OF THE AMENDMENT PROMOTES JUDICIAL ECONOMY AND CONSERVES COMMISSION AND PARTY RESOURCES

As explained above, allowing amendment (or addressing the Motion in a subsequent phase of this proceeding), will have no impact on the threshold questions that has now been fully briefed and awaits a Commission decision. If the Motion is denied, CRPC would have the option to simply file a new application in the name of California Resources Pipeline Company, the affiliate that currently holds title to the Union Island Pipeline. Doing so, however, would be a waste of both Commission and party resources. Filing a new application would require interested parties—at a minimum, the Cities—to file protests or responses, and for the Commission to hold an initial prehearing conference, and issue a new scoping memo. However, the threshold questions identified in the Initial Scoping Memo would still require resolution by the Commission, whether CRPC or the affiliate is the applicant. The Commission would be left having to decide the very same issues that are currently pending before it. Given that the threshold issues must be determined in either case, it simply makes sense to resolve those issues in this proceeding, and then proceed to address, in a second phase, the Motion and any remaining issues.

Requiring CRPC or its affiliate to file a new application would not result in a “just, speedy, and inexpensive determination of the issues presented,” as mandated by Rule 1.2. Granting the Motion and allowing this proceeding to move forward would afford the Commission and the parties the most cost effective and speedy determination of the issues presented.

VI. DISMISSAL IS NOT WARRANTED OR APPROPRIATE

Even were the Motion denied, dismissal of this application is not warranted, nor appropriate. CRPC could still elect to proceed and seek issuance of a CPCN. Were it to obtain a CPCN, it would be authorized to operate the Union Island Pipeline as a public utility gas corporation. The fact that due to a corporate reorganization an affiliate currently holds title to the Union Island Pipeline would not prevent CRPC from obtaining the right to operate that pipeline from its affiliate. And, as explained above, issues associated with CRPC's right to own and/or operate the Union Island Pipeline will be addressed in a later phase of this proceeding, including addressing issues associated with the City of Antioch's refusal to extend the franchise agreement. If the Motion is denied, the decision of whether to voluntarily dismiss the application in order to pursue a new application in the name of the affiliate, or to pursue this application in its own name, should be left to CRPC.

VII. STATUS OF MEET AND CONFER DISCUSSIONS

The January 11 Ruling requested that parties address the results of the parties' meet and confer discussions. As noted in the Cities' and Indicated Shippers' respective responses, the parties met and conferred on January 17, 2025, and did not reach a resolution on the issues identified in the January 11 Ruling. CRPC believes these discussions were settlement discussions subject to Rule 12.6, and therefore any disclosure of the substance of those discussions would be a violation of that rule. CRPC will therefore not address the Cities' purported summary of those discussions, other than to note that CRPC does not fully agree with that summary.

VIII. UPDATE ON JUDICIAL PROCEEDINGS

The Cities' summary of the status of judicial proceedings contained a minor error. The petition for review was re-filed by the California Supreme Court effective January 21, 2025. The

California Supreme Court therefore has until April 21, 2025 (not March 27, 2025) to rule on the petition.

IX. CONCLUSION

CRPC respectfully requests that the Commission grant its Motion to Amend and permit CRPC to file the Amended Application.

Respectfully submitted,

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