BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

In the Matter of the Application of Golden State Water Company, on behalf of its Bear Valley Electric Service Division (U 913 E), for Pre-Approval of Power Purchase Agreements with EDF Trading North America, LLC, Pre-Approval of Power Purchase Agreements with Shell Energy North America (US) L.P., Authority to Recover Costs, Authority to Establish Memorandum Account, and Alternative Pre-Approval Process for Future Power Purchase Agreements.

Application 13-06-018
(Filed June 28, 2013)

MOTION TO MOVE PHASE II DIRECT TESTIMONY INTO THE RECORD

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Pursuant to Rule 11.1 and direction by Administrative Law Judge Melissa K. Semcer in a September 14, 2016 e-mail, Golden State Water Company, on behalf of its Bear Valley Electric Service division, respectfully moves that the attached Bear Valley Electric Service, Volume 3, Phase II Direct Testimony, marked as Exhibit No. BVES-22, be placed in the record of this proceeding.

Respectfully submitted this 21st day of September, 2016.

By: /s/ Fred G. Yanney

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Application No. - A.13-06-018
Exhibit No. BVES-22
Date:______________________
Witnesses: Keith Switzer
Joseph Phalen

BEFORE THE

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OF THE STATE OF CALIFORNIA

BEAR VALLEY ELECTRIC SERVICE

VOLUME 3

PHASE II

DIRECT TESTIMONY

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PHASE II TESTIMONY

I. Scope of Issues for Phase II

On February 24, 2016, Commissioner Carla J. Peterman issued her Assigned Commissioner's Scoping Memo and Ruling ("Scoping Memo"). It noted the background of this proceeding, including its two phases. The Scoping Memo stated that the Phase II issues are specifically limited to consideration of Bear Valley's proposal for an alternative approval process for future power purchase agreements ("PPAs"). (Scoping Memo at p. 3.)

The Scoping Memo emphasized the importance of developing a full record on Bear Valley's proposal to consider how to meet the objectives of simplicity, transparency, and accountability, together with a reduction in the cost burden, delay and risk uncertainty attendant in the existing application process for Bear Valley future procurement activity. (Scoping Memo at p. 4.)

The Scoping Memo directed parties to compare two proposals: (1) having Bear Valley file for Commission review and approval Bear Valley's Integrated Resource Plan ("IRP") and resulting procurement process in Bear Valley's GRC proceeding ("Scoping Memo Proposal"), as compared to (2) Bear Valley's proposal for an alternative approval process ("Bear Valley Proposal"), with the possibility of adopting a benchmark methodology that utilizes a dollar amount per product and other methods to allow more transparency in deriving the benchmark price. (Scoping Memo at p. 4.)

Before comparing the two Proposals, it is helpful to put these alternative proposals in context by briefly summarizing the Commission's power procurement approval process over the last 20 years.

II. Background Of Review and Approval Process for Power Procurement.

Prior to Electricity Crisis. Prior to the California electricity crisis in early 2000, the Commission typically reviewed an investor-owned-utility's power procurement activities as part of that utility's triennial general rate case ("GRC") proceeding. (Rulemaking 01-10-024, Assigned Commissioner's Ruling, April 2, 2002, at p. 2.) "[T]he practice of demonstrating the reasonableness of costs in a subsequent [after-the-fact] review was the norm for many years." (D.09-05-025 at p. 6.) In early 2000-2001, the California electricity crisis in early 2000-2001 forced a dramatic and fundamental change in the Commission's long-held practice of after-the-fact review of power procurement activities.

Consequence of Electricity Crisis. During the electricity crisis, PG&E declared bankruptcy and SCE lost its investment grade rating. California's two largest electric utilities were unable or unwilling to purchase new energy products subject to the Commission's traditional after-the-fact reasonableness review process. (R.01-10-024 at pp. 1-3.) As a consequence, Rulemaking 01-10-024 and Assembly Bill 57 ("AB 57") fundamentally changed both the way California's large electric utilities procured power and the way the Commission reviewed and approved their procurement activities.

As the Legislature was working on developing and passing AB 57, the Commission instituted Rulemaking 01-10-024 in October 2001 with the stated goal of enabling California's largest electric utilities to resume power procurement activities. It is important to understand that this rulemaking and certain related decisions were implemented *prior* to the passage of AB 57 in September 2002. Edison's and PG&E's credit ratings were not sufficient to permit them to secure financing to enable them to purchase power. Without the assurance of prompt recovery of costs reasonably incurred to purchase the necessary power resources (*i.e.*, abandonment of after-the-fact reasonableness review), the utilities stated they could not return to creditworthiness. (R.01-10-024 at pp. 1-3.) In addition, PG&E and Edison testified that they were unwilling to accept procurement risks anymore, and wanted the Commission to pre-approve procurement contracts. (D.02-08-071 at pp. 25-26.)

In R.01-10-024, the Commission directed the large utilities to submit proposed procurement plans specifying, among other things, the types of electrical products to be purchased, the competitive process to be used, the eligibility of a transaction for rate recovery, and the utility's risk management policy, strategy and practices. Relying upon pre-approved utility procurement plans, the Commission intended to eliminate the need for after-the-fact reasonableness reviews while still ensuring just and reasonable rates. (R.01-10-024 at p. 16.)

In the first of several watershed decisions in R.01-10-024, the Commission issued D.02-08-071 (*prior* to the codification of AB 57). In approving this decision, the Commission stated: "We adopt a procedural process to review and approve these [new power] contracts. This process provides the utilities with an opportunity for an *expedited Resolution that resolves* *reasonableness issues*, while ensuring effective Commission oversight." (D.02-08-071 at p. 2, emphasis supplied.)

In creating a new approval process that obviated the need for after-the-fact review, the Commission first identified the types and amounts of contracts eligible for the expedited, approval process. (D.02-08-071 at pp. 11-21.) Then the Commission directed that procurement contracts be subject to sufficient and expedited review by requiring each of the large utilities to establish a procurement review group ("PRG"). The PRG members would have the right to consult with and review: (1) each utility's overall procurement strategy; (2) proposed procurement contracts before the contracts were submitted for expedited review by the Commission; and (3) proposed procurement practices, including requests for proposals ("RFPs"). (D.02-08-071 at p. 24.) The Commission's Energy Division and ORA staff would be *ex officio* members of each PRG. The PRG would assess the procurement contracts and offer assessments and recommendations to the utility. (D.02-08-071 at p. 25.)

In D.02-08-071, the Commission authorized proposed contracts, *or contracts that conformed to approved procurement processes*, to be approved via advice letter filing. "Approval [of the advice letter] constitutes a determination that costs incurred under contract and/*or contracts conforming procurement process are reasonable and prudent*. * * * Approval would constitute determination that cost incurred under the contracts itself and/*or under contracts conforming to procurement process* are reasonable and prudent." (D.02-08-071 at Appendix B, pp. 11-21, emphasis supplied.) The Commission concluded that the "customers of the utilities will benefit from the utilities receiving and exercising this [new] authority in a manner that promotes reliable service at just and reasonable rates." (D.02-08-071 at p. 21.)

Of importance is the fact that this expedited advice letter process applied not only to proposed or actual contracts, but also to contracts that conformed to the procurement plan/process approved by the Commission. This was, in effect, a pre-approval of any contract that conformed to the procurement process/plan approved by the Commission, eliminating the need for any after-the-fact review. In essence, the reasonableness review occurred in approving the procurement process/plan, rather than the actual contract after it was executed. It is also important to note that the Commission implemented this new pre-approval process without the need for new statutory authority or, specifically, the need for AB 57 to become law. In issuing

D.02-08-071, the Commission relied upon its existing statutory authority, presumably Section 451 requiring that utility charges be just and reasonable.

D.02-08-071 was notable for another groundbreaking action. The Commission set a benchmark price for pre-approval of renewable procurement contracts. If the contract was at or below the benchmark price, the contract was deemed *per se* reasonable and not subject to further review. (D.02-08-071 at p. 35.)

The authority granted to the large utilities in D.02-08-071 was interim and the procurement process transitional. Nevertheless, D.02-08-071 demonstrates that the Commission has the authority *independent* of AB 57 (codified as Section 454.5 of the Public Utilities Code) becoming law to (i) approve of a utility's procurement plan, (ii) pre-approve any contract that conforms to the utility's Commission-approved procurement plan, and (iii) establish a benchmark price that allows any contract that meets or is below that benchmark price to be deemed *per se* reasonable and not subject to after-the-fact reasonableness review.

Enactment of AB 57. In the midst of the California energy crisis, the Legislature passed and the Governor signed into law AB 57. It was codified in 2002 as Section 454.5 of the California Public Utilities Code and spawned what the Commission now refers to as the Long Term Procurement Plan ("LTPP") process. Although the Legislature has amended Section 454.5 of the Public Utilities Code ("LTPP Law") since its codification in 2002, the original, core elements of the LTPP Law remain intact.

The LTPP Law requires the large utilities to prepare proposed procurement plans that describe, among other things, (i) the types and amounts of electrical products they intend to procure, (ii) upfront procurement standards and criteria, and (iii) an expedited approval process for the Commission's review of contracts. (Section 454.5(b).) These plans have been updated about two years.

According to the LTPP Law, in approving a procurement plan the Commission is to ensure, among other things, the (i) elimination of need for after-the-fact reasonableness review of a utility's actions that are in compliance with an approved procurement plan, including resulting power purchase agreements, and (ii) timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. (Section 454.5(d).) The Commission is also required to ensure the confidentiality of any market sensitive information submitted with the procurement plan, including any proposed or executed power purchase agreement. (Section 454.5(g).)

The Commission succinctly summed up the LTPP law paradigm shift for approving power contracts when it stated that, ". . . by approving procurement plans [of investor-owned-utilities], the Commission establishes 'up-front standards' for the IOUs' procurement activities and cost recovery. This obviates the need for after-the-fact reasonableness review by the Commission of the resulting procurement decisions." (R.08-02-007 at pp. 2-3.) In D.02-10-062, the Commission similarly stated that "AB 57 steers us away from undertaking" after-the-fact reasonableness review of utilities' procurements that are consistent with a Commission-approved procurement plan. (D.02-10-062 at p. 42.)

In a more recent decision, after nearly a decade of experience with the LTPP Law, the Commission observed that the basic foundation of the LTPP proceeding is that the Commission pre-approves a utility's procurement plan, and if the utility's subsequent procurement is consistent with that plan, then the procurement is considered reasonable. (D.12-01-033 at p. 5.) This achieves the Legislature's objective of eliminating the need for after-the-fact review of a utility's procurement activities. (Section 454.5(d)(2)). As a consequence, the large utilities acquire reasonable and competitively-priced power resources for their customers while facing little or no procurement risk. A win-win scenario.

Not all utilities are required to participate in the rigorous and complex LTPP process. Recognizing the substantial burdens and costs of the LTPP process on small utilities and their small customer-base, the Legislature wisely provided an exemption from the LTPP Law for small utilities in Section 454.5(i). In Resolution 4232, the Commission granted Bear Valley's request to be exempted from the LTPP Law.

The precedent for the Commission to grant Bear Valley's request for a pre-approval process resides with D.02-08-071. And although the Commission declined to allow D.14-12-003 in Phase I granting pre-approval to be used as a precedent, it nonetheless demonstrates that the Commission has the necessary authority, independent of the LTPP Laws, to establish a pre-approval process for Bear Valley.

III. Clarification of Bear Valley's Proposal

On page 3 of the Scoping Memo and Ruling, there is a summary of the key components of Bear Valley's Proposal. Items 1 through 4 are correct summaries. However, item 5 requires clarification.

The Scoping Memo is a partially correct summary where it states in the lead-in text to item 5 that Bear Valley shall "Submit [to the PRG] the final form of the PPA, price refreshes from proposed counterparties, and proposed process to establish a benchmark price for PRG review and feedback . . ." (Scoping Memo at pp. 3-4.) The Scoping Memo mischaracterizes the next steps in Bear Valley's Proposal by stating:

"and *either*:

a. Submit the final form of the PPA, most recent price refreshes, and proposed process to establish the benchmark price to the Commission for approval using a Tier 3 advice letter process; or
b. File executed PPAs via a Tier 1 advice letter compliance filing [footnote 8 deleted] following issuance of an approving resolution by the Commission." (Scoping Memo at p. 4.)

A more accurate summary of the key components of the Bear Valley Proposal would be as follows, with the new or modified text underscored:

1) Establish a Procurement Review Group (PRG);
2) Submit annually an Integrated Resource Plan (IRP) to the PRG for review and feedback;
3) Submit summaries of power procurement bids and analyses to the PRG for review and feedback;
4) Consult with and update the PRG during procurement/negotiation process;
5) Submit the final form of the PPA, price refreshes from proposed counterparties, and proposed process to establish a benchmark price for PRG review and feedback;
6) Submit the final form of the PPA, the IRP[1], the most recent price refreshes, and proposed benchmark price or process to establish the benchmark price to the Commission for approval using a Tier 3 advice letter process;
7) Following the issuance of an approving resolution by the Commission, Bear Valley would then seek to finalize and execute a PPA consistent with the approving resolution;
8) Submit an executed PPA by either:
    a. A Tier 1 advice letter compliance filing if the PPA price is equal to or less than the benchmark price, and no further review or Commission action (except for

[1] As part of this testimony, Bear Valley is amending its Proposal to include its IRP in the Tier 3 advice letter filing.

subsequent prudency review of the administration of the PPA) would be required; or

b. A Tier 3 advice letter filing if the PPA price is greater than the benchmark price, and Bear Valley seeks authority from the Commission to recover those costs related to the above-benchmark price, but regardless would be authorized to recover those costs at the benchmark price without further review or action by the Commission. (Application at pp. 33-39.)

IV. **Phase II Testimony Comparing Two Proposals**

A. Structure of Testimony. As noted in the Scoping Memo, the Commission acknowledged in D.14-12-003 the importance of developing a full record on the Bear Valley proposal to consider how the Commission can meet the objectives of simplicity, transparency, and accountability together with a reduction in the cost burden, delay and procurement risk attendant in the application process. (Scoping Memo at p. 4.)

The Commission also wished to address the possibility of adopting a benchmark methodology that utilizes a "dollar amount per product" calculation rather than reliance upon proprietary market data to allow more transparency in deriving the benchmark.

The ensuing testimony compares the relative merits of the Bear Valley's Proposal as compared to the Scoping Memo Proposal in the context of the following Commission objectives:

1. Simplicity
2. Transparency
3. Accountability
4. Reduction of Cost Burden
5. Reduction of Regulatory Delay
6. Reduction of Procurement Risk/Uncertainty
7. Benchmark Methodology Utilizing a Dollar Amount Per Product
8. Transparency in Deriving Benchmark Price

Mr. Phalen is sponsoring the testimony regarding the Benchmark Methodology Utilizing a Dollar Amount Per Product and the Transparency in Deriving Benchmark Price. Mr. Switzer is sponsoring the remainder of the testimony.

B. Simplicity.

The Bear Valley Proposal is simpler than the Scoping Memo Proposal in several ways. The Bear Valley Proposal would provide robust and timely information to the members of the PRG without the need for costly, time-consuming protocols or procedures. A simple phone call or e-mail request are means by which PRG members could obtain power procurement information from Bear Valley. The form of the response has no formalistic structure or requirement, thereby reducing the administrative burden and legal costs on Bear Valley to respond. This is in stark contrast to the Scoping Memo Proposal that impliedly would require the use of a process that is adversarial in nature. Using a GRC application, prepared testimony, written data requests and responses, reply testimony, possible hearings and briefs are not simple ways for Bear Valley to exchange information with parties. These documents and procedures necessarily are geared to address and resolve controversial matters through litigated hearings. Their preparation and processes are anything but simple.

The Bear Valley Proposal would use an advice letter filing to seek approval by the Commission. By design, obtaining Commission approval through the use of the advice letter process is a far simpler process as compared to the application process. Preparation and prosecution of a formal application is far more complicated than providing the same information using the PRG consultation process and the advice letter filing process. The application process is geared to address and resolve controversial matters through litigated hearings. This adds complexity and legal protocols to all aspects of the provision of information and resolution of issues.

And the recent history of Bear Valley's power procurement activities supports the use of the relatively simple advice-letter process over the relatively complicated application process. Since its filing of Application 08-08-021 in 2008 seeking approval of PPAs, no intervener other than ORA has filed a protest or actively opposed a Bear Valley power procurement filing. And ORA eventually withdrew its only motion to dismiss and took the position that it would "not oppose" Bear Valley's application for approval. More recently, in Phase I of this proceeding (A.13-06-018) seeking approval of additional PPAs, no protests were filed and no evidentiary hearings were held. (D.14-12-003 at p. 3.) These facts support the use of the simpler, less costly advice-letter process versus the more complex, time-consuming and costly.

C. <u>*Transparency.*</u>

There are at least three components of transparency – who, how much, and how often?

Who gets to review the information? The breadth of the potential entities that can review information affects the degree of transparency in any process. As the Commission noted in the

Phase I decision, disclosure of commercially-sensitive market information to the public (which includes market participants) would jeopardize Bear Valley's ability to negotiate the best possible energy prices for its customers. (D.14-12-003 at p. 4.) The Commission is required under Section 454.5(g) to ensure the confidentiality of any market-sensitive material submitted with a procurement plan. Thus, expanding the potential reviewing group beyond ORA, the Energy Division and other non-market participants would increase transparency but would harm Bear Valley's customers. Accordingly, both Proposals should limit the review of market-sensitive material to non-market participants.

How much information is available to review? Transparency is increased when the available amount of information is increased. One way to increase the amount of power-procurement information available to non-market participants is to implement easy and efficient ways non-market participants can request, and Bear Valley can provide, power-procurement information.

The Bear Valley Proposal offers members of the PRG the opportunity to easily request and review information, and provide advice to and consult with Bear Valley, on the full range of power-procurement activities, including but not limited to the following: the IRP, the form of and distribution list for RFPs, the evaluation and ranking of bids received from the RFPs, any proposed hedging strategies, proposed terms and conditions of the PPAs, and the proposed benchmark prices for the PPAs. Even when there is no significant procurement activity, Bear Valley proposes to initiate at least one telephonic meeting annually with the PRG. (Application at p. 35.)

The PRG informal, consultative process allows Bear Valley and non-market participants to easily and efficiently request and exchange information. The format for the exchange of information through the PRG process will likely yield more information, and therefore will achieve greater transparency than the Scoping Memo Proposal which would rely upon the application (adjudicatory) process. Exchange of information in an adjudicatory process is formalistic and, typically, adversarial in nature. In adversarial proceedings, parties rarely volunteer more information than is narrowly construed to have been requested. And the time frame for preparing and responding to data requests is limited. This formalistic, time-constrained, adversarial process is not conducive to the free flow, exchange, and generation of information. When the amount of information available decreases, transparency will also decrease. For these reasons, the Bear Valley Proposal will have greater transparency than the Scoping Memo Proposal.

How often are Bear Valley's power-procurement activities reviewed? The more frequent Bear Valley's power-procurement activities are reviewed, the more transparent Bear Valley's power procurement process would be. Under Bear Valley's Proposal, Bear Valley would initiate with the PRG at least one telephonic meeting annually. (Application at p. 35.) This ensures that members of the PRG are updated at least annually on all of Bear Valley's procurement activities. Annual updates on Bear Valley's procurement activities will result in greater transparency. And the PRG would be consulted and kept apprised of developments whenever Bear Valley seeks to enter into a PPA. Depending upon various circumstances, this could occur several times during a Bear Valley rate cycle.

Because the Scoping Memo Proposal would use Bear Valley's GRC proceeding to review Bear Valley's procurement activities, the frequency of that review would be, at the soonest, every four years. Due to the extension of the rate cycle or delays in completing the GRC process, the frequency of the review period could be five or more years. Accordingly, there will be less frequent reviews of Bear Valley's procurement activities under the Scoping Memo Proposal than the under the Bear Valley Proposal. The less frequent Bear Valley's procurement activities are reviewed, the less transparency there will be.

For the reasons set forth above, the Bear Valley Proposal will clearly result in greater transparency as compared to the Scoping Memo Proposal.

D. *<u>Accountability.</u>*

Bear Valley would be more accountable to the Commission under its Proposal as compared to the Scoping Memo Proposal because of the greater amounts of information and the greater frequency of review of Bear Valley's procurement activities. Increased amounts of information and increased frequency of reviews will result in greater accountability.

Under Bear Valley's Proposal, Bear Valley would initiate with the PRG at least one telephonic meeting annually. (Application at p. 35.) This would ensure that the members of the PRG are updated at least annually on all of Bear Valley's procurement activities.

In addition, any member of the PRG could review, provide advice to and consult with, Bear Valley regarding its annual updated IRP, the form and distribution list for any RFPs, the evaluation and ranking of any bids received from RFPs, proposed hedging strategies, proposed terms and conditions for any proposed PPAs, and any proposed benchmark prices/methodologies. (Application at p. 35.) Annual reviews and feedback of Bear Valley's updated IRP will result in increased accountability of Bear Valley's procurement activities. Reviews by, and consultation with, members of the PRG regarding any proposed RFPs, hedging strategies, proposed terms of PPAs and proposed benchmark prices/methodologies would provide immediate accountability of Bear Valley and an opportunity to modify any proposals found wanting.

Under the Scoping Memo Proposal, Bear Valley's IRP would be reviewed in Bear Valley's GRC proceeding, which might occur every four to five years. This elongated review process would provide substantially less accountability of Bear Valley's procurement activities. In addition, with after-the-fact review of Bear Valley procurement activities, there would be no opportunity for Bear Valley to receive input and the opportunity to modify and improve proposals. Although Bear Valley's procurement activities may ultimately have been found to be reasonable, with timely review and input before actions were taken, it is possible that Bear Valley's reasonable procurement activities could nonetheless have been improved and benefited its customers.

Under the Bear Valley Proposal, the proposed final form of the PPA, the most recent price refreshes, and the proposed process to establish the benchmark price would be submitted to the Commission for approval using a Tier 3 advice letter process. (Application at p. 33.) Bear Valley modifies its Proposal to require that the Tier 3 filing also include its IRP for Commission review and approval. This would afford the Commission the opportunity to review and approve of Bear Valley's IRP every time Bear Valley seeks approval of a proposed PPA, which would increase the accountability of Bear Valley's procurement activities.

The Scoping Memo Proposal would review and approve Bear Valley's IRP and procurement activities during Bear Valley's GRC proceeding. (Scoping Memo at p. 5.) Bear Valley's GRC proceeding might occur every four to five years. This elongated, GRC review process would provide substantially less accountability of Bear Valley's IRP and procurement activities as would occur under Bear Valley's Proposal. In addition, with after-the-fact review of Bear Valley IRP and procurement activities, there would be no opportunity for Bear Valley to receive input and the opportunity from the PRG to modify and improve Bear Valley's IRP or procurement activities on an ongoing basis.

Because the Scoping Memo Proposal would use Bear Valley's GRC proceeding to review Bear Valley's procurement activities, there could be less amounts of information available (as discussed above). Potentially less information, coupled with longer periods of time between reviews of Bear Valley's procurement activities, will likely result in reduced accountability.

With more frequent review of Bear Valley's procurement activities through the PRG process, the Tier 3 advice letter filing every time Bear Valley seeks pre-approval for a PPA, and the likely increase in the amount of information regarding Bear Valley's procurement activities, the accountability of Bear Valley will be much greater under its Proposal than what would occur every four to five years under the Scoping Memo Proposal.

E. Reduction of Cost Burden.

Preparation and prosecution of an application, as opposed to an advice letter filing, entails a great deal more time and expense for Bear Valley and its customers. Because Bear Valley has a very small customer base (approximately 21,500 residents and 1,400 commercial customers), it makes the associated regulatory costs, on a per-customer basis, quite high when compared to the three largest California utilities.

One goal of Bear Valley establishing a PRG is to facilitate the exchange of information and feedback between PRG members and Bear Valley with a minimum of formality and cost. (Application at p. 34.) Although the application process and the PRG/advice letter process might yield similar amounts of information, the PRG/advice letter process would clearly generate that information with less formality and cost than the application process.

With no formal filing or procedural requirements for the PRG process, Bear Valley could provide requested information to ORA and the Energy Division in an informal and efficient manner. This is in stark contrast to the expense of the more formal processes of preparing an application, drafting direct and reply testimony, and providing written responses to data requests.

These processes require drafting of multiple legal documents, which are costly for a small utility. Bear Valley believes that the PRG/advice letter process will likely yield greater amounts of information at substantially less cost to Bear Valley and its customers, than the application process contemplated under the Scoping Memo Proposal.

For example, Bear Valley proposes to prepare an annual update to its IRP and submit a final draft to the PRG for review and feedback. After an opportunity to receive and consider any PRG written feedback, Bear Valley would finalize its IRP. (Application at p. 35.) This process is a far more efficient and less costly process than the Scoping Memo Proposal that would require Bear Valley to formally file the finalized IRP in an application proceeding, prepare supporting direct testimony and possibly reply testimony, and formally respond to data requests and possibly write briefs defending the efficacy of the IRP from any criticism or attacks. Without the need to have lawyers drafting questions and answers to data requests, PRG members and Bear Valley staff could work cooperatively in addressing concerns and requested improvement to the IRP through informal dialogue and possible modification to the IRP. This process is far more cost effective and efficient. And it would yield a much better IRP than if Bear Valley submitted a final IRP in an application process and ORA or others challenged the efficacy of the IRP.

Bear Valley's Proposal provides that prior to the issuance of any RFP for procurement of power resources that it would submit a draft RFP and draft distribution list to the PRG for review and written feedback. Following the opportunity to receive and consider PRG feedback, Bear Valley would make any final changes to the RFP and distribution list, and then distribute the RFP to potential bidders. Bear Valley's Proposal also contemplates consultation during the bid process and providing information and periodic updates to the PRG.

Copies of any proposed final PPAs, including a brief summary of the key elements, would be provided to the PRG. In addition, the PPA, the proposed benchmark price (or process to determine the benchmark price) would be provided to the PRG before Bear Valley would submit them to the Commission for approval. After an opportunity to review and provide written feedback, Bear Valley would finalize its benchmark proposal and submit it for approval via a Tier 3 advice letter filing. (Application at pp. 36-37.)

The informal PRG process of providing the RFP, the distribution list, the exchange of information between bidders and Bear Valley, forms of PPAs, benchmark prices and summary of elements of PPAs is far less costly than drafting an application and direct testimony, and responding to data requests regarding all of these matters as would occur under the Scoping Memo Proposal. All of these things require that Bear Valley utilize legal counsel, which increases Bear Valley's costs.

If a dispute arose under the Scoping Memo Proposal, both ORA and Bear Valley would incur legal costs. With the informal PRG process, Bear Valley could respond to questions or possibly modify its RFP, distribution list, terms and conditions of the PPA, benchmark price process etc. to eliminate or address any concerns members of the PRG might raise. A goal of the PRG process is to resolve issues through the consultative process, thereby avoiding the expense of litigating issues. It is proposed that all meetings of the PRG be made telephonically unless PRG members and Bear Valley agree that a face-to-face meeting is warranted. (Application at p. 35.) Avoiding travel from Southern California to San Francisco for meetings with ORA or Energy Division or hearings, if necessary, avoids considerable expense to Bear Valley. Thei avoidance of travel costs would not liiely occur using the application process under the Scoping Memo Proposal.

Not only would money and resources of both ORA and Bear Valley, and possibly the Commission, be conserved with this informal process, it is likely to yield a better RFP, a more robust distribution list, a better form of PPA, a better benchmark price, and/or a better PPA price. A win-win for all concerned.

For the reasons identified above, Bear Valley's Proposal will be less costly to implement than the Scoping Memo Proposal.

F. *Reduction of Regulatory Delay.*

The Bear Valley Proposal incorporates the use of a Tier 3 advice letter process to obtain Commission approval of the IRP, procurement activities, the terms and conditions of the PPA, and the benchmark pricing mechanism. As compared to waiting until the GRC application is filed, this advice letter process would be initiated whenever Bear Valley has completed its consultative process with the PRG, completed the RFP process, and submitted the proposed PPAs and benchmark prices to the Commission for approval. This greatly reduces delays in regulatory approval of Bear Valley's procurement activities and compared to the Scoping Memo Proposal.

The Scoping Memo Proposal would have Bear Valley's IRP and resulting procurement activities reviewed as part of Bear Valley's GRC. (Scoping Memo at p. 5.) This structure would substantially increase the regulatory delay in obtaining Commission approval as compared to Bear Valley's Proposal.

Bear Valley typically has a four-year rate cycle. However, there have been delays in the issuance of a final decision which has resulted in the final decision being issued more than a year beyond the end of the four-year rate cycle. And, at Bear Valley's request, the Commission issued D.16-02-021 authorizing the existing four-year rate cycle to be extended to five years. Thus, relying upon the GRC process to review Bear Valley's procurement activities will result in much greater uncertainty and delay in the regulatory approval process than Bear Valley's Proposal.

Reviewing and approving Bear Valley's IRP once every four to five years would force Bear Valley to purchase power resources based upon a potentially out-of-date IRP that may no longer reflect the current needs of Bear Valley customers or the current state of the power market, or both. In such an event, Bear Valley could be put in the untenable position of being forced to abide by a Commission-approved, but out-of-date IRP and purchasing amounts or kinds of power resources that no longer meet Bear Valley customer needs, or purchase the correct amounts and types of power actually needed and risk having the Commission find Bear Valley's procurement activities unjust and unreasonable because it failed to follow its (out-of-date) IRP.

For the reasons set forth above, the Scoping Memo Proposal would clearly increase the delay in regulatory approval of Bear Valley's procurement activities as compared to Bear Valley's Proposal.

G. *Reduction of Procurement Risk/Uncertainty.*

The primary impetus for the Application, and in particular Phase II of the Application, is the elimination of the huge procurement risk associated with after-the-fact prudency review of Bear Valley's procurement activities. (Application at pp. 3, 5, and 33.) No power supplier offered to be bound to a fixed price PPA while Bear Valley sought Commission approval. Since Bear Valley typically purchases a very large percentage of its power resources through only four contracts, the financial magnitude of its regulatory risk for those four contracts is enormous.

The Scoping Memo Proposal would require Bear Valley to file its procurement activities for review and approval in its GRC proceeding. (Scoping Memo at p. 5.) This would expose Bear Valley to a time-delayed, after-the-fact prudency review of all power procurement activities that have occurred over a four- to five-year period. This review structure would result in the maximum amount of procurement risk and uncertainty for Bear Valley's power procurement activities.

Not only is the Scoping Memo Proposal the polar opposite of Bear Valley's Proposal in terms of procurement risk, it is an *increase* in procurement risk over Bear Valley's *current* use of the power procurement application process. As it did in this proceeding, Bear Valley has previously filed an application immediately prior to, or immediately following, the execution of the PPAs. Because there is no time-delay in the current procurement application process, the Scoping Memo Proposal process, which relies upon a GRC proceeding occurring every four to five years, would increase the current procurement risk due to the delayed review and approval of Bear Valley's power procurement activities.

Adopting the Scoping Memo Proposal would cause Bear Valley's power supply procurement and approval process to regress to a review structure the Commission abandoned for the large utilities some 15 years ago. The Commission jettisoned the use of the after-the-fact review process in large part due to the enormous procurement risk on the large utilities. After-the-fact review of small utilities' procurement activities has the same result --- enormous procurement risk.

Restricting the review of Bear Valley's procurement activities to its GRC proceedings under the Scoping Memo Proposal would result in delayed, after-the-fact review by the Commission, which is inconsistent with the Legislature's intent set forth in Section 454.5(d) and with the current LTPP process afforded to the large utilities. In D.02-10-062, the Commission stated that "AB 57 steers us away from undertaking" after-the-fact reasonableness review of utilities' procurements. (D.02-10-062 at p. 42.) After-the-fact prudency review of procurement activities in a utility's GRC proceeding was a basis for PG&E and Edison's poor credit rating and their unwillingness to accept procurement risks anymore. (D.02-08-071 at pp. 25-26.) Adopting an after-the-fact reasonableness review in Bear Valley's GRC proceeding every four or five years would clearly run counter to the Legislature's intent in the LTPP Law (AB 57) and counter to the manner in which the large utilities currently procure power for their customers. The Bear Valley Proposal is modeled after the LTPP Laws, but with less complexity and cost to Bear Valley and its customers.

The key to reduction of procurement risk under Bear Valley Proposal is the elimination, or minimization, of the use of after-the-fact prudency review of PPAs. This would be achieved through the creation of a PRG comprised of representatives of ORA and Energy Division and the following process. Bear Valley's IRP would be reviewed by the PRG annually. The PRG would be consulted with and kept apprised of each step of the process to enter into a PPA. This would include the review and consultation with respect to the RFPs, distribution lists, bid analyses, proposed terms and conditions of the PPA, and the proposed benchmark price. Bear Valley would submit by a Tier 3 advice letter filing, and the Commission could review and approve on an after-the-fact basis, Bear Valley's IRP, the final forms of the PPAs, the most recent price refreshes, and the proposed benchmark price (or process to establish the benchmark price). At this juncture, Bear Valley has no procurement risk because it has not executed any PPA.

Following the issuance of an approving resolution, Bear Valley would then finalize and execute its PPAs consistent with the approving resolution. If a PPA is otherwise consistent with the approving resolution and the price is equal to or less than the benchmark price, Bear Valley would have no procurement risk. The executed PPA would be filed via a Tier 1 advice letter and the price would be deemed *per se* reasonable. Except for an after-the-fact prudency review of the administration of the PPA, the PPA would be subjected to no other review. With this process and factual scenario, Bear Valley would have *no* procurement risk.

If a PPA is otherwise consistent with the approving resolution but the price is greater than the benchmark price, Bear Valley would have procurement risk limited to the price that exceeded the benchmark price. The executed PPA would be filed via a Tier 3 advice letter and Bear Valley would seek authority to recover the costs above the benchmark price; nevertheless, the cost resulting from the price at the benchmark price would be deemed *per se* reasonable without further review by the Commission. Under this factual scenario, Bear Valley has *some* procurement risk, but it is *limited* to only those costs resulting from the price being above the benchmark price.

With the Scoping Memo Proposal, Bear Valley would execute the required PPAs, and presumably submit the IRP that was in effect at the time each PPA was executed, the RFPs that were used for each PPA, the bid analyses for each of the bids received for each of the PPAs, and supporting testimony as to why the RFPs, terms, conditions, and the price of each PPA were just and reasonable. *All* aspects of the PPA process would be subject to after-the-fact prudency review and the risk the Commission could reject all the PPAs as being unjust and unreasonable. This process needlessly subjects Bear Valley to enormous procurement risk. In addition, due to the potential for substantial time lag between the execution of the PPA and the next GRC, the market could have dropped dramatically making the price of the PPAs look unreasonable even though they may have been reasonable at the time the PPAs were executed. This potential factual scenario exacerbates the already high degree of procurement risk and the possibility the Commission will find the PPAs unjust and unreasonable.

As described above, the procurement risk under the Bear Valley Proposal as compared to the Scoping Memo proposal are polar opposites. With its proposed pre-approval process, the Bear Valley Proposal has little, if any, procurement risk provided Bear Valley complies with the Commission's approving resolution. With its delayed, after-the-fact review of all aspects of Bear Valley's procurement activities, the Scoping Memo Proposal needlessly burdens Bear Valley with *enormous* procurement risk.

Bear Valley believes a prudent and reasonable pre-approval process is legally available to the Commission and would avoid the huge procurement risks for Bear Valley under the application process using an after-the-fact review. The Commission can utilize over a decade of experience in the rigorous and complex LTPP process in order to fashion a procurement review and authorization process that greatly reduces or eliminates Bear Valley's procurement risk, and is cost-effective and appropriate for a small utility. As stated in the Application, Bear Valley's Proposal is largely modeled after, and consistent with, the expedited approval process the Commission granted to the large IOUs in D.02-08-071. Bear Valley's proposed alternative approval process for its PPAs is also consistent with many of the fundamental concepts and objectives of the current LTPP process codified in Section 454.5. (Application at p. 41.)

H. *Benchmark Methodology Utilizing a Dollar Amount per Product.*

The Scoping Memo directed that testimony be provided regarding the "possibility of adopting a benchmark methodology that utilizes a 'dollar amount per product' calculation rather than rely upon proprietary market data . . .." (Scoping Memo at p. 4.) The phrase "dollar amount per product" was used by the Commission in D.14-12-003, indicating that it would consider adopting "a specific dollar amount per product price benchmark" methodology in Phase II of the proceeding. (D.14-12-003 at p. 16) Neither D.14-12-003 nor the Scoping Memo provides any reference to the use of the term "dollar amount per product" in a prior Commission proceeding or what methodology would be used to derive such an amount. Bear Valley researched the phrase "dollar amount per product" in the Commission's data base of past decisions and was unable to find any reference to such a phrase. Moreover, there is no reference in D.14-12-003 or the Scoping Memo as to who or how a "dollar amount per product" would be derived.

Before Bear Valley can compare its benchmarking methodology to a methodology that utilizes a dollar per product calculation, Bear Valley must develop a theory as to how a dollar per product calculation might be made

A number of years ago, the Commission developed a market price referent ("MPR") value for use with the Renewable Portfolio Standard ("RPS") solicitations. Although since repealed,[2] legislation at one time required the Commission to establish "market prices" after the closing date of the utilities' annual RPS solicitations. (Resolution E-4442 at p. 3.) Commission decisions D.04-06-015 and D.08-10-026 also required the development and use of an MPR. The MPR was used to determine whether a renewable energy contract selected from the competitive solicitation had above-market costs associated with it.

The MPR represented the presumptive cost of electricity from a non-renewable energy source, which the Commission, in D.03-06-071, held to be a natural gas-fired baseload or peaker plant. (D.04-06-015 at p. 6, fn. 10.) The MPR was intended to represent what it would cost to own and operate a baseload combined cycle gas turbine ("CCGT") power plant over various time periods. The cost of electricity generated by such a power plant, at an assumed technical

[2] SB 2 (1X) (Simitian, Chapter 1, Statues of 2011, First Extraordinary Session) removed the MPR as the basis for cost containment.

capacity factor and set of costs, was the proxy for the long-term market price of electricity established by the Commission. To ensure the different products including baseload, peaking, and as-available output, the large IOUs had to apply their IOU-specific Time of Delivery profiles to the baseload MPR. PG&E, SCE and SDG&E each had to develop time of delivery ("TOD") factors based on the forward value of electricity during different TOD periods. (Resolution E-4442 at p. 5.)

In 2007, an additional component was added to the MPR calculation. The Commission adopted an interim method, in D.07-09-024, to account for the costs of emission of greenhouse gases ("GHG adder"). In 2008, the Commission reevaluated the MPR in D.08-10-026 and made substantial revisions to the MPR methodology, including the methodology for determining the cost of natural gas fuel, the capacity factor, and the cost of compliance with greenhouse gas regulation for the MPR proxy plant. The decision also revised the methodology for calculating installed capital costs and transmission line losses and it authorized staff to calculate MPR values for a 25-year contract. (Resolution E-4442 at pp. 5-6.)

The 2011 MPR (the last MPR calculation that Bear Valley could find) was based on a cash-flow simulation model approved by the Commission. The model required a number of input data, including natural gas prices, capital costs, operating costs, finance costs, taxes, and power delivery assumptions. The primary input drivers for the MPR calculations were California gas price forecasts, power plant capital costs and the capacity factor for a proxy baseload plant. (Resolution E-4442 at p. 5.)

Once Commission staff completed this extraordinarily complex and arduous task of developing an MPR, the draft calculations were served on a very large service list for comment. This substantial, complex and arduous task was performed multiple times by Commission staff, with extensive oversight by the Commission and stakeholders, over a multi-year period. It seems unlikely that the Commission would direct staff to again undertake such a massive, complex and costly task as calculating an MPR each time Bear Valley seeks to procure a power product. And Bear Valley has neither the staff nor the resources nor the information to undertake such a substantial, complex and arduous task.

Establishing an MPR or a "dollar amount per product price benchmark" for each product Bear Valley seeks to acquire would engender considerable importance to the Commission and the electric utility industry in California. No matter who was tasked with such an undertaking, it would need to be thoroughly vetted and tested for accuracy before the Commission could approve it as being a just and reasonable price for a product to be purchased by Bear Valley for its customers. Such a proceeding would add additional costs and time commitments to Bear Valley's small staff each time it was necessary to procure a new product for Bear Valley's customers. Preparation, review and adoption of a dollar amount per product for each product Bear Valley seeks to purchase in the future would be enormously more expensive and time-consuming for Bear Valley's small staff, Commission staff and the Commission itself as compared to the review and adoption of an industry-accepted, propriety market dollar amount.

There are several proprietary market analyses that are well-regarded by the industry. If these market analyses were not valid and were unreliable, the marketplace would decline to purchase them and they would quickly vanish. And compared to the cost of preparing a dollar amount per product for each and every product Bear Valley will purchase in the future, a well-regarded, proprietary market analysis would be much more cost-effective for Bear Valley's customers.

To be clear, Bear Valley derives no economic benefit from purchasing power products at inflated prices. In fact, providing high-priced electrical service to its customers when lower-cost products are available needlessly brings the ire of Bear Valley's customers. No legitimate business undertakes an action that has no economic benefit and enrages its customers when another course of action is available. In this case, Bear Valley has no reason to purchase more expensive power products for its customers when less expensive power is available.

The key to obtaining power products at the lowest possible cost is a rigorous and robust bidding process that invites all potential suppliers to participate. That is precisely what Bear Valley does in seeking to acquire the necessary power products at the lowest possible costs to its customers. Bear Valley believes that a well-regarded, proprietary market analysis is the best, most cost-effective benchmark price available for pre-approving a product for Bear Valley. But ultimately, the best price offered to Bear Valley resulting from a robust and vigorous open-bidding process is the ultimate test of what is a just and reasonable price for a particular product, in a particular market, at a particular moment in time.

The development and approval of a "dollar amount per product" benchmark price for each product Bear Valley seeks to purchase, and to do so every time Bear Valley seeks to purchase a new electrical product, would be time-consuming and prohibitively expensive to Bear Valley and its customers. As correctly noted in the Scoping Memo, Bear Valley seeks to "streamline the process and be more cost-effective than relying solely upon the application process." (Scoping Memo at p. 3.) The development, implementation and approval of a specific dollar amount per product benchmark price each time Bear Valley seeks to purchase an electric product would be the antithesis of adopting a more streamlined and cost-effective process than the current benchmark process.

In summary, Bear Valley does not have the resources, information or capability to derive a "dollar amount per product" for each of the products that it seeks to purchase from the market, and it is not aware of the availability of this type of information except through private companies using proprietary market data.

I. *__Transparency in Deriving Benchmark Price__*.

The Scoping Memo directed that other methods be explored to allow for more transparency in deriving the benchmark price. (Scoping Memo at p.4.) Transparency of Bear Valley's activities and the information provided to the Commission by Bear Valley is normally in the best interests of Bear Valley's customers. However, any transparency in deriving the benchmark price for Bear Valley's PPAs that educates market participants will harm Bear Valley's customers.

Not surprisingly, power marketers follow Commission proceedings involving the sale and purchase of power in California. Although Bear Valley is small, power marketers or their counsel do monitor Bear Valley's power-related proceedings, including this proceeding.

Power marketers try to sell their products at the highest possible price. In a free market, this is expected. Bear Valley seeks to buy power products at the lowest possible price for its customers. Any information regarding how the benchmark price is derived for Bear Valley PPAs will be used by power marketers to their advantage, and at the expense of Bear Valley's customers.

The Commission is required under Section 454.5(g) to ensure the confidentiality of any market-sensitive material submitted with a procurement plan. In D.06-06-006 the Commission adopted procedures to maintain the confidentiality of commercially-sensitive information, such as benchmark prices. In Phase I where the Commission approved of the methodology to derive the benchmark prices, the Commission stated: "We agree that disclosure of the proposed benchmark calculation methodology and commercially available market information would jeopardize BVES' negotiations of the final prices associated with the EDF and Shell confirmation [sic] approved by today's decision." (D.14-12-003 at p. 4.)

Transparency of how the benchmark price was or is to be derived must be restricted to non-market participants. This could be achieved through the PRG process, as only non-market participants should be eligible to be members of the PRG. Bear Valley also would be willing to provide information to non-market participants that are not members of the PRG, subject to sufficient legal and enforceable safeguards being put in place to ensure that such information was kept confidential.

J. *Safety Issues.*

The Commission noted in Rulemaking 13-12-010 (with respect to an LTPP proceeding) that an important component of the Commission's LTPP efforts is the connection between reliability and safety. The Commission observed that when electric power fails: traffic controls either cease to operate or operate at reduced levels leading to an increase in automobile accidents; persons dependent on electric medical devices are placed at risk; food may be inadequately refrigerated leading to increased incidence of food-borne illness; and communication systems may cease to operate. The Commission concluded that, to the extent reasonable, the LTPP attempts to improve safety through increased reliability and other actions directly related to the procurement of electric resources. (R.13-12-010 at p. 5.)

Bear Valley's Proposal, with its consultative PRG process involving ORA and the Energy Division, will enhance Bear Valley's power procurement processes through the knowledge that ORA and Energy Division have acquired working with the larger utilities in the LTPP process. Employing enhanced power procurement processes will help to support the reliability of Bear Valley's electric service. Strengthening the reliability of Bear Valley's service will strengthen the safety of Bear Valley's service territory and customers.