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Ratesetting

TO PARTIES OF RECORD IN APPLICATION 13-06-018:

This is the proposed decision of Administrative Law Judge Melissa Semcer. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's April 6, 2017 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, ex parte communications are prohibited pursuant to Rule 8.3(c)(4)(B).

/s/ KAREN V. CLOPTONKaren V. Clopton, Chief
Administrative Law Judge

KVC:avs

Attachment

Decision PROPOSED DECISION OF ALJ SEMCER (Mailed 3/3/2017)

BEFORE THE 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 (U913E) 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)

**DECISION DENYING BEAR VALLEY ELECTRIC SERVICE DIVISION'S
PHASE II REQUEST FOR ALTERNATIVE PROCUREMENT PROCESS AND
ADOPTING AN INTERIM BENCHMARKING METHODOLOGY AND POWER
PURCHASE AGREEMENT APPROVAL PROCESS**

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**DECISION DENYING BEAR VALLEY ELECTRIC SERVICE DIVISION'S
PHASE II REQUEST FOR ALTERNATIVE PROCUREMENT PROCESS AND
ADOPTING AN INTERIM BENCHMARKING METHODOLOGY AND POWER
PURCHASE AGREEMENT APPROVAL PROCESS**

Summary

This decision denies Golden State Water Company's Bear Valley Electric Service Division (Bear Valley) request to approve an alternative procurement process whereby Bear Valley would establish a procurement review group and submit power purchase agreements for approval via the Commission's advice letter process.

This decision adopts on an interim basis the procurement process approved in Phase 1 of this decision. The interim procurement process allows Bear Valley to submit for approval negotiated terms and conditions and an appropriate confidential product price benchmark. Upon Commission approval of the terms and conditions and the product price benchmark, Bear Valley is free to finalize the price and execute a power purchase agreement. At that time, Bear Valley must submit via Tier 1 advice letter a copy of the final executed power purchase agreement if the executed price is at or below the approved product price benchmark. If the final price is above the product price benchmark, Bear Valley must submit a Tier 3 advice letter to seek recovery of the above-benchmark costs.

This interim procurement process will remain in effect unless and until the procurement process for small electric investor-owned is modified in Rulemaking 16-02-007, *Rulemaking to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements*, or in any other Commission rulemaking addressing the small electric investor-owned utility procurement process.

This proceeding is closed.

1. Background and Procedural History

On June 28, 2013, Golden State Water Company, on behalf of its Bear Valley Electric Service Division (Bear Valley) filed Application (A).13-06-018 seeking approval of four proposed Power Purchase Agreements (PPAs) with EDF Trading North America and Shell Energy North America, authority to recover costs, authority to establish a memorandum account and, relevant to this decision, approval of an alternative pre-approval process for future non-renewable power purchase agreements.

Bear Valley provides electric service in the communities surrounding Big Bear Lake, a resort community in the San Bernardino Mountains, northeast of the Los Angeles Area. Bear Valley serves approximately 21,500 full-time and part-time residents and approximately 1,400 commercial, industrial or public authority customers. Bear Valley also provides service to two ski resorts in its territory.

In the filing of A.13-06-018, Bear Valley requested a two-phase proceeding. In Phase I, Bear Valley sought approval of the four PPAs, associated cost recovery and establishment of a memorandum account. No party protested Phase 1, and the Commission did not hold hearings. On December 4, 2014, the Commission adopted Decision (D).14-12-003 approving the four PPAs¹ subject to filing the final executed agreements by advice letter. In addition, the Commission

¹ D.14-12-003, *Decision on Bear Valley Electric Service Division Application Approving an Executed Master Agreement, Pre-Approving Power Purchase Agreement and Initiating Phase 2* (December 4, 2014).

authorized Bear Valley to utilize a product benchmark pricing mechanism for the Phase 1 PPAs on a one-time, non-precedential basis.²

D.14-12-003 also directed the assigned Administrative Law Judge (ALJ) to set a prehearing conference (PHC) initiating Phase II as soon as practicable after Bear Valley executed the Phase 1 PPAs and received approval of the agreements via the advice letter process.³ In January and February of 2014, the Director of the Commission's Energy Division notified Bear Valley that the Commission had approved the Advice Letter filings pertaining to the four PPAs,⁴ all of which were executed below the corresponding benchmark prices approved in D.14-12-003.

² D.14-12-003 at 2.

³ *Id* at Ordering Paragraph 9.

⁴ Bear Valley filed Advice Letter 296-E on December 22, 2014 seeking approval of the annual baseload PPA with EDF, the seasonal baseload PPA with Shell and the call option PPA with EDF. The Director of the Energy Division, in a letter dated January 22, 2015, notified Bear Valley that Advice Letter 296-E was approved effective December 22, 2014. On February 24, 2015, Bear Valley filed Advice Letter 297-E seeking approval of the System Resource Adequacy PPA with Shell. The Director of the Energy Division, in a letter dated February 24, 2015, Division notified Bear Valley that Advice Letter 297-E was approved effective January 15, 2015.

1.1. Procedural Issues

On July 13, 2015, the assigned ALJ convened a PHC, during which Bear Valley reiterated its request that Phase II consider an alternative approval process for future PPAs. Bear Valley stated at the PHC that it did not anticipate engaging in additional PPAs for several years and suggested postponement of Phase II until the ongoing General Rate Case progressed further.⁵ No party protested Bear Valley's Phase II requests.

On January 21, 2016, Bear Valley informed the then-assigned ALJ via e-mail (and with service to the Service List of A.13-06-018) that it believed a favorable market existed in which to purchase additional power for its customers. As a result, Bear Valley requested issuance of a Phase II decision. Assigned Commissioner Carla J. Peterman issued a Scoping Memo and Ruling on February 24, 2016, and Bear Valley served its Phase II testimony on April 8, 2016. Bear Valley also notified the then-assigned ALJ and all parties on the service list via email on May 31, 2016 that Bear Valley had sent out a Request for Proposals for additional PPAs and that Bear Valley sought to use the pre-approval process it had proposed in A.13-06-018. On September 21, 2016, Bear Valley filed and served a motion requesting to move its Phase II testimony into the record.

1.2. Initiation Phase II

Citing to the burdens and costs of filing an Application, Bear Valley proposes that an alternative process be approved to: (1) streamline the procurement process and be more cost-effective than relying solely upon the application process; (2) increase Commission oversight of Bear Valley's power

⁵ Reporter's Transcript at 6-7.

procurement process; (3) increase accountability and transparency of Bear Valley's power procurement process, and (4) eliminate the need for after-the-fact reasonableness review of PPAs procured through the Commission-approved process.⁶

Bear Valley lists the following as the key components of the proposal:⁷

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,⁸ 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. Bear Valley would submit the executed PPA by either:

⁶ A.13-06-018 at 33.

⁷ The proposal articulated in this decision differs slightly from how the proposal was presented in the Scoping Ruling. It is updated to reflect the more accurate description contained in Bear Valley's testimony (Exhibit BVES-1 at 6-7).

⁸ Bear Valley amended its proposal to include submission of the IRP in the Advice Letter per its testimony (*see* Exhibit BVES-22 at 6).

- 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 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.
9. Bear Valley's Current Procurement Process.

Pursuant to California Pub. Util. Code Section 454.5, which codifies the electric procurement process adopted in Assembly Bill (AB) 57,⁹ the Commission follows a process, which has been developed through numerous decisions, whereby the utilities' mitigate the regulatory risk inherent in an after-the-fact reasonableness review process. To accomplish this mitigation, the large electric utilities file on a biennial schedule proposed procurement plans that present the types and amounts of electrical products they intend to procure along with up front procurement standards and criteria. Upon Commission approval of the plans, the large Investor-owned Utilities (IOUs) may engage in procurement activities for contracts of less than five years duration without further Commission approval. For contracts of greater than five years duration, the large IOUs file formal applications.¹⁰

⁹ Stats 2002, Ch. 835.

¹⁰ See D.02-08-071, D.02-10-062, D.04-01-050, D.04-12-048, and D.07-12-052 for an overview of the electric utility procurement process.

As an added layer of oversight, the Commission established PRGs in D.02-08-071 and updated the process in D.07-12-052. The Commission's current practice is to approve contracts for the large electric utilities only after a review by a formalized PRG where competent interested parties have an opportunity to review the entire procurement proposal and the utility's analytical review process. This process provides intervenors with access to confidential information and the ability to provide prompt feedback to the utility if intervenors are concerned about the proposed transactions. There is currently no formal procurement review group process for Bear Valley (or other small electric utilities).

Recognizing the burdens and costs of participating in the long-term procurement process described above, Pub. Util. Code § 454.5 exempts small IOUs with a customer base of less than 500,000 from filing procurement plans upon written request from the utility. In Resolution E-4232, addressing Advice Letter 224-E, filed on August 22, 2008, the Commission granted Bear Valley's request to be exempted from that provision of Section 454.5. Furthermore, Bear Valley and the other small electric IOUs have not been required to form a PRG. Therefore, to date, Bear Valley has required Commission approval of already executed PPAs, which is known as after-the-fact reasonableness review. Bear Valley asserts in the instant application that after-the-fact reasonableness creates significant regulatory risk as well as imposing significant costs on a small utility by requiring engagement in the formal application process.

2. Issues Before the Commission

At the heart of Bear Valley's request is how the Commission reviews and approves of non-renewable energy and capacity purchases by the electric IOUs.

The principle issue the Commission must address in this application is whether Bear Valley's proposed alternative procurement process, including use of a pre-approved benchmark price, is reasonable and in the best interest of ratepayers. To fully address this issue, the Scoping Ruling required that the Commission compare Bear Valley's procurement proposal against the option of reviewing procurement activities, including its IRP, as part of Bear Valley's General Rate Case (GRC) process.

In addition, the Scoping Ruling determined that Phase II would consider the possibility of adopting a product benchmark methodology that utilizes a "dollar amount per product" calculation, rather than relying upon proprietary market data, as was used by Bear Valley in Phase 1. The intention was to explore a benchmark methodology that allows for greater transparency in deriving the benchmark price used in a pre-approval process.

3. Discussion

This decision denies Bear Valley's alternative procurement process proposed in A.13-06-018. However, this decision adopts a similar pre-approval methodology as was approved in Phase I of this application, whereby Bear Valley may submit, via an application, a request for pre-approval of PPAs, including a product benchmark price. Upon approval of the PPAs and the product benchmark price, Bear Valley may submit final executed PPAs via a Tier 1 advice letter if the final executed price is at or below the approved product benchmark price or via a Tier 3 advice letter for the portion of the executed PPA that is above the approved product benchmark price.

In so approving this interim procurement process, the Commission seeks to reduce the regulatory risk associated with after-the-fact review of already executed contracts and modestly reduce regulatory costs by using the advice

letter process for final approval of executed PPAs. This interim procurement process will remain in effect unless and until the procurement process for small electric IOUs is modified in Rulemaking (R.) 16-02-007, *Rulemaking to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements*, or in any other Commission rulemaking addressing the small electric IOU procurement process.

The Commission declines to adopt a public, non-confidential benchmark price at this juncture; Bear Valley may use a proprietary benchmark price methodology that will be examined on a case-by-case basis through the formal application process.

The Commission acknowledged in D.14-12-003 the importance of developing a full record on the Bear Valley proposal to consider how to meet the objectives of simplicity, transparency and accountability together with a reduction in the cost burden, delay and uncertainty risk attendant in the application process for Bear Valley's future procurement activity. Bear Valley offered testimony in which it provided a thorough comparison of its alternative proposed procurement process against both its existing process and the proposal contained in the Scoping Ruling, which would move the Commission's consideration of Bear Valley's procurement to its General Rate Case. Bear Valley also analyzed the continued use of proprietary data to derive the benchmark price against the Scoping Ruling proposal to use a "dollar amount per product" benchmark.

We first address Bear Valley's procurement proposal in its entirety and then turn to a discussion of the product benchmark methodology.

3.1. Bear Valley's Analysis of its Proposed Procurement Process

As stated earlier in this decision, Bear Valley proposes a procurement process whereby a PRG would have access to both Bear Valley's IRP and its negotiation process for individual PPAs. After receiving feedback from its PRG, Bear Valley seeks to submit the negotiated PPA(s), an IRP, the most recent price refreshes and a proposed benchmark price or process to establish the benchmark price for approval via the Tier 3 Advice Letter process. Following the issuance of an approving resolution, Bear Valley would submit the executed PPA via a Tier 1 Advice Letter compliance filing if the PPA price is equal to or less than the benchmark price or via a Tier 3 Advice Letter if the final executed price is greater than the approved benchmark price. In the case of a Tier 3 Advice Letter, Bear Valley would seek authorization to recover those cost related to the above-benchmark price, but regardless, would be authorized, pursuant to the original resolution, to recover those costs at or below the benchmark price without further review or action by the Commission.

In Bear Valley Exhibit Number 22 (BVES-22), Witness Switzer addresses several metrics for evaluating the proposed alternative procurement process, including simplicity, transparency, accountability, cost burden, regulatory delay and procurement risk and uncertainty. On simplicity, Switzer asserts that "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."¹¹ Furthermore, information would flow more easily through the informal PRG process, therefore reducing administrative burden

¹¹ See Exhibit BVES-22 at 8.

and legal costs, and simplicity is warranted because Bear Valley's recent power procurement activities have been unopposed.¹²

Bear Valley, in testimony, argues that its proposed procurement process would allow for greater transparency by increasing the potential group of entities able to review its procurement activities beyond ORA to other non-market participants while continuing to protect commercially-sensitive market information. Furthermore, the amount of information available would increase through use of the PRG, and Bear Valley could easily and more often respond to requests for information about its procurement activities outside of the formal application process. Bear Valley states "this formalistic, time-constrained, adversarial process is not conducive to the free flow, exchange and generation of information."¹³ Finally, Bear Valley argues that the frequency of information flows would increase as a result of the PRG, thus furthering transparency because information would be exchanged on an ongoing basis.

Bear Valley asserts that the proposed procurement process would ensure greater accountability to the Commission because greater amounts of information would be reviewed at increased frequency. Bear Valley, in its proposal, would initiate at least one meeting with its PRG annually. In addition, because PRG members would also review Bear Valley's IRP, there would be increased accountability of Bear Valley's procurement activities. Finally, inclusion of the IRP with every submission of a Tier 3 Advice Letter seeking

¹² Switzer acknowledges that in in A.08-08-021, the most recent application in which Bear Valley sought approval of PPAs, ORA intervened but later withdrew its motion to dismiss.

¹³ See Exhibit BVES-22 at 9-10.

approval of PPAs would allow the Commission greater oversight of Bear Valley's IRP and the opportunity to approve the IRP at a greater frequency.

In testimony, Bear Valley notes that preparation and prosecution of a formal application, as opposed to an advice letter filing, entails more time and expense for Bear Valley and therefore its customers. Because Bear Valley is a small utility, associated regulatory costs on a per-customer basis are high when compared to the three largest California electric utilities.¹⁴ The use of a PRG would allow for an informal flow of information to occur at reduced expense as opposed to preparing an application, drafting direct and reply testimony and providing written responses to data requests. Finally, Bear Valley notes that disputes could be resolved through the PRG process rather than all sides incurring legal fees, as would be required of a dispute that arises through the formal application process.¹⁵

In regards to regulatory delay, Bear Valley focuses mainly on the timing of approval of GRC applications (the Scoping Memo proposal), which will be discussed in further detail below. Procurement risk and uncertainty; however, Bear Valley asserts, would be greatly reduced with the elimination of after-the-fact reasonableness review, as proposed in its alternative procurement process. Bear Valley states that no power supplier "offered to be bound to a fixed price PPA while Bear Valley sought Commission approval."¹⁶ Because it purchases a very large percentage of its power resources through four PPAs, Bear Valley argues that the "financial magnitude of its regulatory risk for these four contracts

¹⁴ *Id* at 12.

¹⁵ *Ibid.*

¹⁶ Exhibit BVES-22 at 16.

is enormous.”¹⁷ Using its proposed procurement process, PPAs would not be executed until the Commission has issued an approving resolution, including approval of a benchmark price, therefore eliminating the regulatory risk associated with the existing procurement process.

3.2. Bear Valley’s Analysis of the Scoping Memo Process: Use of GRCs

In the Scoping Memo, the assigned Commissioner sought to examine another alternative procurement process whereby Bear Valley's PPAs would be approved concurrent with its GRCs, which are filed every four or five years. Using the same comparative criteria (simplicity, transparency, accountability, cost burden, regulatory delay and procurement risk and uncertainty), Bear Valley argues that approving PPAs through the GRC process, as proposed in the assigned Commissioner's Scoping Memo, would create a situation whereby Bear Valley is worse off than its current after-the-fact reasonableness review process.

Bear Valley asserts that its proposed procurement process is much simpler and streamlined than the use of GRCs, whereby prepared testimony, data requests, possible hearings and briefs would be required. Bear Valley argues that its proposed process allows for an informal flow of information as well as a simplified advice letter process, as opposed to the formal proceeding process for approving GRCs. Bear Valley argues that a simplified process is appropriate given no intervenors have actively opposed any of Bear Valley's recent applications for approval of PPAs.

¹⁷ *Ibid.*

Bear Valley states that transparency is reduced through a formal GRC process because information flow is restricted and limited only to the facts of the application at hand, as opposed to the free flow of procurement information that would occur with the institution of a PRG. Accountability would also be increased through adoption of its proposed procurement process over the Scoping Memo process, Bear Valley avers, because there would be an increased and more frequent flow of information between Bear Valley and the Commission. Under its proposal, Bear Valley's IRP would be reviewed annually, whereas using the GRC process, it would be reviewed every four or five years.

As stated above, Bear Valley asserts that prosecution of a formal application results in a significant cost burden, especially legal costs, for a small utility. Prosecution of PPAs through the GRC process would not eliminate the need for formal filings, as opposed to the more informal process proposed by Bear Valley, and disputes would incur legal costs. Filing PPA applications as part of the GRC process, as proposed in the Scoping Memo, would maximize regulatory uncertainty and risk as well as regulatory delay for Bear Valley over even the existing procurement process because after-the-fact reasonableness review could be significantly delayed given the infrequent nature of the GRC process.

3.3. Commission Analysis

The Commission has reviewed both Bear Valley's procurement process and the Scoping Memo proposal and has determined that, at this juncture, neither alternative process is prudent and in the best interest of ratepayers. The Commission is sympathetic to Bear Valley's argument that the current PPA approval process is both laborious and expensive, requiring the use of a litigated formal process before the Commission, especially for a small utility such as

Bear Valley where regulatory costs are borne by a small number of customers. Furthermore, the Commission always seeks to increase transparency in the procurement process, and the free-flow of information is beneficial to all parties involved. The Commission found merit in this free flow of information and informal oversight when it established the PRGs as a means of expediting the approval process in D.02-08-071 as updated by D.07-12-052.

On its face, then, the Bear Valley proposal can be seen as an improvement on many counts over the currently in place after-the-fact reasonableness review process. However, the Commission finds that the proposed alternative process, while potentially increasing transparency and the flow of information across interested parties while reducing regulatory cost, comes at the expense of the formal review necessary to ensure that procurement decisions are made in the best interest of Bear Valley's ratepayers.

Bear Valley is correct in stating that the PRGs currently in place by the large IOUs result in an informal review process for procurement of less than five years duration (PPAs of five years or greater must come before the Commission through a formal application); however, the large IOUs go through a formal review process of their procurement strategy through the long-term procurement proceedings. In the long-term procurement proceedings, the Commission and interested parties are able to undertake an in depth review of each large IOUs procurement strategies to ensure that a sufficient amount (and no more) of energy and capacity is procured to meet the medium and long-term power and reliability needs of each large utility. Only upon formal review and approval of that strategy are the IOUs able to engage in executing contracts of less than five years duration. Thus, the PRG process was never meant to be the primary method of oversight for procurement of the utilities; rather, it was

added as an additional level of oversight and transparency after a formal review process of the large IOUs' procurement strategy has been undertaken.

Bear Valley's proposal brings to the informal realm almost the entirety of its procurement process and then suggests the Commission use the advice letter process, rather than the application process, to review executed PPAs. The Commission finds Bear Valley's proposal to be an inappropriate use of the advice letter process, which is meant to address matters of a more ministerial nature or issues that are expected to be non-controversial (*See* GO 96-B). Bear Valley is correct in noting that in recent history its PPA requests have been uncontested; however, a lack of intervenors in recent applications does not necessarily denote a non-controversial issue. Future applications for approval of PPAs could prove controversial with disputed issues of fact requiring hearings, which are not possible through the advice letter process.

On the other hand, if future PPAs remain uncontested, it is entirely likely that the sole participants in Bear Valley's PRG will be the Commission's own Energy Division staff, which will not result in any increased transparency beyond the status quo. The Commission always has the ability to ask for information necessary to evaluate a utility's ongoing procurement process at any time. The Commission finds that staff's resources are best used in supporting the evaluation of individual PPAs rather than being primarily responsible for such evaluation through the advice letter process.

Finally, the Commission finds that Bear Valley's proposal does not comport with the direction of AB 57, which states that a small utility may request exemption from the procurement plan review process undertaken by the large IOUs, but then must engage in after-the-fact review of executed contracts. In its testimony, Bear Valley argues that the Commission holds the authority to adopt

a procurement process outside of the statutory process in place pursuant to AB 57. Bear Valley asserts that the Commission, in D.02-08-071 exercised its authority separate from and prior to the codification of AB 57 to allow for pre-approval of utility procurement plans to ensure for just and reasonable rates while eliminating the need for after-the-fact reasonableness review.

Bear Valley is correct that the Commission approved an interim process; however, this process was in response to extenuating circumstances not currently in place (the electricity crisis) and, as noted by Bear Valley, occurred prior to the passage of AB 57, which codified in statute certain procurement processes. The Commission does not have the authority to override statutory requirements in order to reduce the regulatory burden for any particular utility. Therefore, for the reasons stated above, the Commission does not approve Bear Valley's proposed alternative procurement process at this time.

In regards to the Scoping Memo proposal, whereby Bear Valley's PPAs would be reviewed concurrent with its GRCs, the Commission agrees with Bear Valley that this process would do little to improve costs, regulatory risk or transparency for Bear Valley's ratepayers, and indeed could cause harm from greatly increased regulatory risk. The relative infrequency of GRCs, every four or five years, could result in greatly increased regulatory risk for Bear Valley's ratepayers to their detriment when compared to the current procurement approval process in place. Therefore, the Commission does not adopt the Scoping Memo proposal.

The Commission does find, however, that the PPA process approved on a non-precedential basis in Phase 1, whereby Bear Valley submits PPAs containing the terms and conditions of a negotiated contract along with a product benchmark prior to final execution of contracts, is an appropriate compromise to

reduce regulatory risk and potentially modestly reduce the cost burden to Bear Valley's ratepayers while still complying with AB 57 procurement rules.

Upon review of the outcome of the results of Phase 1 PPAs (all came in at or under the approved product price benchmark), the Commission finds that an expedited process that allows for formal review and prosecution of PPAs with adoption of an appropriate price benchmark, ensures an appropriate level of ratepayer protection while reducing regulatory uncertainty and, possibly, regulatory costs. Furthermore, because the process adopted today allows for a formal review of Bear Valley's PPAs, thus protecting ratepayers, along with final approval via advice letter, thus comporting with the after-the-fact reasonableness review provisions of AB 57. Therefore, although the Commission adopted an expedited process on a non-precedential basis in Phase 1, the Commission finds that extending the Phase 1 expedited process to future PPAs still allows for the same level of ratepayer protection as the after-the-fact reasonableness review process.

The Commission adopts on an interim basis the process approved in Phase 1 and extends it to all future Bear Valley procurement unless and until the Commission changes the procurement process for small IOUs in R.16-07-002 or any other procurement related decision. The specific details of the adopted interim process are set forth in Section 4.5 below. The price benchmark methodology is discussed in the subsequent section.

3.4. Price Benchmark Methodology

In D.14-12-003, the Commission approved the use of proprietary and confidential market data to set a benchmark price in order to expedite the PPA

approval process. Referring to D.09-06-050,¹⁸ the Commission stated that in the Renewable Portfolio Standard (RPS) procurement context, a price reasonableness benchmark was necessary for a fast-track approval process. The Commission found that some of the fundamental issues that arose in the RPS proceeding were also present in Phase 1 of this proceeding, such as the tradeoffs between the use of benchmarks based on proprietary market data in an expedited review process and the need for transparency and other ratepayer protections.

As such, the Commission approved the price reasonableness benchmark and regulatory review process¹⁹ on a one-time, non-precedential test basis.

However, the Commission stated:

“We continue to be concerned that the value of transparency in regulatory oversight by use of publicly available, relevant market information is again eclipsed by the reliance on confidential market data and the need to protect energy procurement contract information. Confidentiality of particular contract prices must be preserved (*see* D.06-06-066), but public disclosure of some information about prices is both possible and desirable.”²⁰

In an effort to increase transparency, the Commission sought to review alternative benchmarking methodologies in Phase II, including a dollar amount per product price benchmark. The Commission declined to adopt a specific dollar amount per product price benchmark in Phase 1, but committed to

¹⁸ D.09-06-050, *Decision Establishing Price Benchmarks and Contract Review Processes for Short-Term and Bilateral Procurement Contracts for Compliance with the California Renewables Portfolio Standard*, issued June 19, 2009.

¹⁹ The regulatory review process involved the filing of executed PPAs under the Tier 1 Advice Letter designation if the final contract price was at or less than the approved benchmark price.

²⁰ D.14-12-003 at 16.

consider the ability to do so in Phase 2 for BVES' future procurement contracts. To inform its decision, the Commission decided to rely in part on the outcome of the PPAs approved in Phase 1 and the ensuing advice letters.

In Testimony, Bear Valley equated a dollar-per-product benchmark to the Commission's development of a market price referent (MPR) for use with Renewable Portfolio Standards (RPS) solicitations. In that proceeding, the MPR represented the presumptive cost of electricity from a non-renewable energy source which, in D.03-06-071, the Commission determined to be a natural gas-fired baseload or peaker plant. As noted by Bear Valley, development of the MPR was a complex and time-consuming task. Bear Valley argues that it would be unpractical to undertake such an effort each time Bear Valley seeks to procure a power product and, indeed, would be cost prohibitive and time consuming.

Instead, Bear Valley suggests that there are several proprietary market analyses that are well-regarded by the industry that would be more appropriate to use as a benchmark than the development of a dollar-per-product benchmark. Furthermore, Bear Valley argues, it does not derive any economic benefit from purchasing power products at inflated prices; to do so would draw the reproach of its customers. The best and most reliable method for obtaining power products at the lowest cost is a robust and rigorous bidding process that invites all potential suppliers to participate; which is what Bear Valley states in testimony that it undertakes.

In regards to transparency, Bear Valley argues that, while transparency is generally to the benefit of ratepayers, when it comes to the derivation of a benchmark price, transparency would ultimately harm Bear Valley's customers by allowing power marketers access to information that could result in inflated prices. Bear Valley states that the Commission is required to protect the

confidentiality of market-sensitive information submitted with a procurement plan under Pub. Util. Code Section 454.5(g), and product benchmark data falls under this protection. If such data is to be shared, it must be restricted to non-market participants, such as those who participate in a PRG.

3.4.1. Analysis

Although the Commission strives to increase transparency in the procurement process, Bear Valley's argument against development of a dollar-per-product methodology is convincing. To undertake development of such a benchmark would be cost and time prohibitive and does not result in such benefit as to justify the cost. Furthermore, the Commission agrees with Bear Valley that any product price benchmark must remain confidential to ensure that ratepayers receive the best price.

The Commission finds, as stated above, that review of PPAs prior to final execution, including review of a product price benchmark, will result in reduced regulatory risk and delay, which is ultimately to the benefit of Bear Valley's ratepayers. Therefore, at this juncture, the Commission will allow Bear Valley to use proprietary market analyses when submitting a confidential product benchmark with its PPAs, and the Commission will review the benchmark on behalf of ratepayers. The Commission remains committed to price transparency, and if the Commission is able adopt a methodology in another proceeding addressing procurement holistically across the small IOUs that further increases transparency, then the interim benchmark methodology adopted here will be superseded at that time.

3.5. Interim Approved Procurement Methodology Summary

The interim procurement methodology approved for Bear Valley is as follows:

- 1) Bear Valley shall submit for Commission approval, via application, the terms and conditions, along with a proprietary product price benchmark, for PPAs that are in the final stages of negotiation. The application must include a current copy of Bear Valley's IRP.
- 2) Upon approval of the PPA terms and conditions and the confidential product price benchmark, Bear Valley is free to negotiate and execute a final PPA.
- 3) If the final PPA is consistent with the terms and conditions approved by the Commission and the executed energy and capacity price is at or below the approved product price benchmark, Bear Valley shall submit the final executed PPA via Tier 1 advice letter, which will become effective pursuant to the terms of GO 96-B.
- 4) If the final executed capacity and energy price is above the approved confidential product price benchmark, Bear Valley shall submit a Tier 3 advice letter for recovery of above-benchmark costs.
- 5) This interim procurement methodology will remain in place unless and until the Commission approves an alternative procurement methodology for Bear Valley in R.16-02-007 or any other proceeding addressing Bear Valley's procurement practices.

3.6. Safety

Although not explicitly in the scope of this proceeding, the Commission must always consider the safety implications of the utilities under its jurisdiction. A component of safety is providing reliable energy services to a utility's ratepayers. The Commission finds that approval of the interim procurement methodology in this decision meets the objectives of providing safe and reliable power while decreasing regulatory uncertainty and delay.

4. Motion to Move Phase II Testimony Into the Record

On September 21, 2016, Bear Valley filed and served a motion seeking to move its Phase II testimony, served on April 8, 2016, into the record. Rule 13.8(c) allows for prepared testimony to be offered into evidence by written motion when hearings are not held. The assigned ALJ identified and received into the record Exhibit BVES-22, the Direct Testimony of Witnesses Switzer and Phalen, on October 1, 2016.

5. Comments on Proposed Decision

As provided by Rule 14.3 of our Rules of Practice and Procedure and Pub. Util. Code § 311(g)(1), the proposed decision of the ALJ in this matter was mailed to the parties on _____. Comments were filed on _____.

6. Assignment of Proceeding

Carla Peterman is the assigned Commissioner and Melissa K. Semcer is the assigned ALJ in this proceeding.

Findings of Fact

1. In Phase 1 of this proceeding, the Commission approved the terms and conditions of four PPAs, along with a confidential product price benchmark, on a non-precedential basis and directed Bear Valley to submit the executed PPAs for final approval via advice letter.

2. The executed price of each of the PPAs approved in Phase 1 came in at or below the approved product price benchmark. The Commission approved the executed PPAs in Advice Letter 296-E and 296-E effective to December 22, 2014 and January 15, 2015, respectively.

3. Pub. Util. Code § 454.5 exempts small IOUs with a customer base of less than 500,000 from filing procurement plans, upon written request from the

utility. The Commission, in Resolution E-4323, granted Bear Valley's request to be exempted from filing procurement plans pursuant to § 454.5.

4. The Commission established PRGs in D.02-08-071, as updated in D.07-12-052, for the large IOUs as an added layer of oversight beyond approval of procurement plans for contracts of less than five years duration. The Commission exempted small IOUs from the PRG process.

5. Bear Valley's current procurement approval process requires submission of executed PPAs for Commission consideration, also known as after-the-fact reasonableness review.

6. Bear Valley's regulatory costs are spread across a relatively small customer base.

7. Bear Valley's most recent PPA applications have not been contested.

8. Bear Valley's proposed procurement process relies entirely on informal review of its PPAs, including use of the advice letter process.

9. The advice letter process adopted in GO 96-B is meant for matters of a ministerial or non-controversial nature.

10. Bear Valley's proposed alternative procurement process would not allow for hearings in the event of a contested advice letter filing.

11. It is unclear whether any entity other than the Commission's Energy Division would participate in a Bear Valley PRG. Energy Division staff always has the ability to ask for information necessary to evaluate a utility's ongoing procurement process at any time.

12. Bear Valley's proposed alternative procurement process, while potentially reducing regulatory costs, regulatory delay and increasing transparency, does not allow for the formal review necessary to ensure ratepayer protection.

13. The Commission cannot exempt a small utility from the provisions of § 454.5.

14. Bear Valley's general rate case proceedings occur every four or five years.

15. The Scoping Memo proposal will not improve upon Bear Valley's current procurement process and could increase regulatory risk because of the amount of time between general rate case proceedings.

16. Approving the terms and conditions of a PPA, along with a product price benchmark, prior to final execution of a PPA, can result in reduced regulatory risk and a potential modest reduction in regulatory costs.

17. Extending the expedited approval process adopted in Phase 1 of this proceeding to future PPAs still allows for the same level of ratepayer protection as the after-the-fact reasonableness review process.

18. Pre-approval of PPA terms and conditions, along with a product price benchmark, and final price approval via the advice letter process provides sufficient ratepayer protection.

19. Developing a public product price benchmark for all procurement products would be time consuming and cost prohibitive.

20. If a specific proprietary product price benchmark were to be made public, ratepayers could be subjected to inflated prices.

21. The Commission is considering the IRP process for large and small IOUs in R.16-02-007.

22. On September 21, 2016, Bear Valley filed and served a motion seeking to move its Phase II testimony, served on April 8, 2016, into the record.

23. Approval of the interim procurement methodology in this decision meets the objectives of providing safe and reliable power while decreasing regulatory uncertainty and delay.

24. All outstanding matters in A.13-06-018 are resolved.

Conclusions of Law

1. Bear Valley's proposed alternative procurement process is inconsistent with § 454.5.

2. Pre-approving the terms and conditions of negotiated PPAs, along with a confidential product price benchmark, followed by final approval through the advice letter process, is consistent with §454.5.

3. Bear Valley's proposed alternative procurement process and the Scoping Memo proposal should be rejected.

4. It is reasonable to extend the Phase 1 PPA approval process, including use of a confidential product price benchmark, to all Bear Valley PPAs on an interim basis.

5. The procurement process in this decision should remain in place unless and until the Commission adopts another procurement process for the small IOUs in R.16-02-007 or any other proceeding addressing Bear Valley's procurement processes.

6. Pursuant to Rule 13.8(c), Exhibit BVES-22, the Direct Testimony of Witnesses Switzer and Phalen, should be received into the record of this proceeding.

7. A.13-06-018 should be closed.

O R D E R

IT IS ORDERED that:

1. The alternative procurement process proposed by Golden State Water Company on behalf of its Bear Valley Electric Service Division is denied.
2. The Commission declines to adopt the procurement process set forth in the Assigned Commissioner's February 24, 2016 Scoping Memo whereby executed Golden State Water Company's Bear Valley Electric Service Division's power purchase agreements would be reviewed as part of general rate case applications.
3. Golden State Water Company's Bear Valley Electric Service Division (Bear Valley) is authorized to use the procurement process adopted in Phase 1 of this proceeding on an interim basis unless and until the California Public Utilities Commission adopts or alters the procurement process for small investor-owned utilities in Rulemaking 16-07-002, *Rulemaking to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements* or any other proceeding addressing the procurement process of the small investor-owned utilities. The adopted interim procurement process is as follows:
 - 1) Bear Valley shall submit for Commission approval, via application, the negotiated terms and conditions, along with a proprietary confidential product price benchmark, for power purchase agreements that are in the final stages of negotiation. The application must include a current copy of Bear Valley's Integrated Resources Plan.
 - 2) Upon Commission approval, via decision, of the power purchase agreement terms and conditions and the confidential product price benchmark, Bear Valley is free to negotiate and execute a final power purchase agreement.

- 3) If the final power purchase agreement is consistent with the terms and conditions approved by the Commission, and the executed energy and capacity price is at or below the approved confidential product price benchmark, Bear Valley shall submit the final executed power purchase agreement via Tier 1 advice letter, which will become effective pursuant to the terms of General Order 96-B.
- 4) If the final executed power purchase agreement capacity and energy price is above the approved confidential product price benchmark, Bear Valley shall submit a Tier 3 advice letter for recovery of above-benchmark costs.

4. Pursuant to Rule 13.8(c), Exhibit BVES-22, the Direct Testimony of Witnesses Switzer and Phalen, was identified and received into the record on October 1, 2016.

5. Application 13-06-018 is closed.

This order is effective today.

Dated _____, at Santa Rosa, California.