



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

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Order Instituting Rulemaking to Continue
Implementation and Administration of California
Renewables Portfolio Standard Program.

Rulemaking 11-05-005
(Filed May 5, 2011)

**COMMENTS OF BEAR VALLEY ELECTRIC SERVICE (U913-E), A DIVISION OF
GOLDEN STATE WATER COMPANY, ON PROPOSED DECISION
IMPLEMENTING PORTFOLIO CONTENT CATEGORIES FOR THE
RENEWABLES PORTFOLIO STANDARD PROGRAM**

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October 27, 2011

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Pursuant to Rule 14.3 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure and the October 7, 2011, Proposed Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program (“Proposed Decision” or “PD”), Bear Valley Electric Service (“BVES”), a division of Golden State Water Company, hereby provides these comments on the Proposed Decision.

I. Introduction and Summary

BVES is a small electric utility in the Big Bear recreational area of the San Bernardino mountains that provides electric distribution service to approximately 21,500 residential customers in a resort community with a mix of approximately 40% full-time and 60% part-time residents. Its service area also includes about 1,400 commercial, industrial and public-authority customers, including two ski resorts. BVES’ service

territory is connected to the CAISO via Southern California Edison's system. The Commission recognizes small and multi-jurisdictional utilities as SMJUs.

In Section 3.10, the Proposed Decision confirms that new Section 399.18(b) applies to BVES and that the limitations on the use of procurement in each portfolio content category does not apply to it.¹ Thus, BVES may use renewable energy credits ("RECs") to meet all of its RPS obligations. For a very small utility that has struggled to acquire bundled RPS energy to meet its RPS obligations, this is truly good news.

Recently BVES became aware of questions being raised as to its authority to use the advice letter process for review of its REC contracts. BVES requests confirmation or clarification be added to the PD that confirms that BVES may file REC and RPS contracts for Commission approval using the advice letter process, rather than the application process.

II. Restriction on Use of Advice Letter by BVES Tied to \$77/MWh Cap

In D.08-05-029 entitled "Decision on Participation of Small and Multi-Jurisdictional Utilities in the Renewables Portfolio Standard Program", the Commission carefully examined the application of the RPS program requirements to small and multi-jurisdictional utilities. The Commission recognized the complexities of participating in the RPS program for SMJUs and granted certain accommodations to them.

The Commission noted in D.08-05-029 that a cap of \$77/MWh had been imposed in D.02-07-041 on BVES' weighted annual energy cost used to calculate BVES' purchased power adjustment clause rate.² The cap was significantly lower than the MPR

¹ PD at p. 53 and fn. 77 of PD at p. 53.

² D.08-05-029 at p. 28.

and was expected to remain so in the future.³ BVES was concerned that the high cost of RPS energy would result in BVES' energy costs exceeding the \$77/MWh cap. BVES requested the Commission declare that the \$77/MWh cap would not apply to RPS-eligible energy.

The Commission declined BVES' request for an exemption from the \$77/MWh cap for RPS costs, and also imposed a requirement on BVES to use the application process for approval of RPS contracts, but *only as long as a cap on BVES' charges was in place*. The Commission stated:

In order to allow BVES to undertake only one procedural step in seeking approval of RPS contracts, we will require that BVES submit any PPAs for RPS-eligible power for approval by means of an application, rather than an advice letter, *as long as any cap on its charges for electricity is in place*. [footnote omitted.] The application should provide the same information as Energy Division recommends for an RPS advice letter filing. The application will, however, allow a more thorough examination of the pricing issues and will provide a record on the basis of which we could, in appropriate circumstances, consider varying the \$77/MWh cap.⁴

It is clear that the Commission's requirement that BVES use an application (as opposed to an advice letter) when seeking approval of an RPS contract was *tied* to the \$77/MWh cap, which BVES was concerned might be exceeded by high-priced RPS contracts. The Commission reasoned that the use of the application process will provide a record upon which the Commission could consider varying the \$77/MWh cap, as requested by BVES.

The \$77/MWh cap has expired and is no longer in effect as of September 1, 2011. Thus, the reason for using the application process (*i.e.*, create a record to allow the Commission to modify the \$77/MWh cap to accommodate higher-priced RPS contracts) no longer exists. If the Commission had intended the requirement for BVES to use the

³ D.08-05-029 at pp. 28-29.

⁴ *Id.* at p. 29 (emphasis supplied). See also ordering paragraph 17 at p. 52.

application process to apply until otherwise ordered by the Commission, it certainly could have done so. But it did not make such a blanket requirement. It expressly stated that BVES was to use the application process, *rather than the advice letter process*, only as long as any cap on its charges for electricity is in place. With no cap in place, BVES should be able to use the advice letter process for its RPS contracts, including REC contracts.

III. As Authorized by Commission in D.02-07-041, \$77/MWh Cap Has Been Removed

The \$77/MWh cap imposed on BVES' energy costs pursuant to D.02-07-041 was implemented through the addition of a new Paragraph #6 in BVES' Preliminary Statement L. Paragraph #6 was the regulatory means for imposing the \$77/MWh cap on BVES. Paragraph #6 in BVES' Preliminary Statement L included a statement that the \$77/MWh paragraph "shall remain in effect through August 31, 2011 or as authorized by the Commission." The Commission specifically approved the Preliminary Statement in D.02-07-041,⁵ which directed that the \$77/MWh cap remain in effect until August 31, 2011.

Since the imposition in 2002 of the \$77/MWh cap pursuant to D.02-07-41, the Commission has not authorized any additional or new cap on BVES' energy costs.⁶

In Advice Letter 248-E, BVES requested, and the Director of the Energy Division approved, the removal of Paragraph #6 from BVES' Preliminary Statement effective September 1, 2011. With its removal, as of September 1, 2011 BVES no longer has a cap of any form imposed upon its charges for electricity.

⁵ Ordering paragraph #9 in D.02-07-041 adopted the Preliminary Statement attached to the Settlement Agreement.

⁶ To BVES' knowledge, no other California electric utility has a cap on its electric rates.

With no cap in effect, in D.08-05-029 the Commission granted to BVES clear authority and direction to use the advice letter process for seeking approval of RPS contracts, including REC contracts, rather than the application process.

IV. D.10-03-021 Also Provides Clear Authority to BVES to Use Advice Letter Process

The Commission also granted authority for BVES to use the advice letter process for RPS contracts, and specifically REC contracts, in D.10-03-021 (“REC Decision”).⁷ In the REC Decision, the Commission authorized all investor-owned utilities to submit REC contracts for review and approval by advice letter, starting April 1, 2010. Nowhere in the REC Decision is there language or policy reasons to conclude that the Commission intended to exclude BVES from such a clear statement of authority for all investor-owned utilities.

In Section 4.7.1 of the REC Decision, the Commission addressed the issue of REC contract approval. The Commission noted that no party opposed the straw proposal developed by the Energy Division that REC contracts be reviewed in the same way as analogous contracts for RPS-eligible bundled energy.⁸ The straw proposal provided that “Currently, all IOU bundled RPS contracts must be filed by advice letter.”⁹ The Commission directed that, except for use of the fast-track process, the Energy Division staff was to use the *current advice letter process* for reviewing REC contracts, while making any adaptations necessary.¹⁰ The Commission did not exclude use of the advice letter process for BVES’ REC contracts, or any other utility’s REC contracts for that

⁷ D.10-03-021, Appendix D, p. 3.

⁸ Id. at p. 50.

⁹ Appendix B of D.10-03-021 at p. B4, emphasis supplied.

¹⁰ D.10-03-021 at p. 52, emphasis supplied.

matter. All investor-owned utilities are authorized to use the advice letter process for review of REC contracts, including BVES.

In the REC Decision, the Commission felt it necessary on a number of occasions to refer to various subsets of investor-owned utilities (*e.g.*, large utilities, small utilities, multi-jurisdictional utilities, etc.) when setting forth the rights, obligations, restrictions and use with respect to RECs. Had it intended to grant all of the investor-owned utilities except BVES the right to use the advice letter process for approval of REC contracts, it could easily have done so. But it did not.

V. No Practical or Policy Reason Exists for Requiring BVES to Use the Application Process When Other Utilities Are Authorized to Use the Advice Letter Process

There is no policy or practical reason for the Commission to deny to BVES the same right other utilities, including other SMJUs, have to use the advice letter process for RPS contract approval. In particular, given that RECs have a shelf life of only three years, there is a compelling policy reason for the Commission to use a stream-lined process for approving all REC contracts, including BVES' REC contracts.

If BVES is required to use the application process, REC owners will be reluctant to sell RECs to BVES for fear that by the time the Commission approves the contract the RECs will be “stale” and no longer be eligible for RPS compliance purposes. This will put BVES at a competitive disadvantage in the REC market.

Being an extremely small utility, BVES should be granted the right to use a process that entails the least administrative costs to its ratepayers and yields the quickest results. There is no policy or practical reason to require the smallest investor-owned utility to use the most expensive, time-consuming approval process, when the large

investor-owned utilities and other SMJUs are authorized to use a less expensive, faster approval process.

VI. Summary

For all the reasons set forth above, BVES respectfully requests the Commission to confirm or grant the authority for BVES to use the advice letter process with respect to its REC and other RPS contracts.

Dated: October 27, 2011

Respectfully submitted,

/s/ Fred G. Yanney

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VERIFICATION

I am Vice President of Regulatory Affairs of Golden State Water Company. Bear Valley Electric Service (“BVES”) is a division of Golden State Water Company.

The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 27, 2011 at Los Angeles, California.

/s/ Keith Switzer

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