BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

FILED
05-23-12
04:59 PM

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	Rulemaking 11-05-005 (Filed May 5, 2011)

RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLAN OF BEAR VALLEY ELECTRIC SERVICE (U-913 E), A DIVISION OF GOLDEN STATE WATER COMPANY

Jedediah J. Gibson
Ellison, Schneider & Harris, L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512
Email: jjg@eslawfirm.com

May 23, 2012

Attorneys for Bear Valley Electric Service

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	Rulemaking 11-05-005 (Filed May 5, 2011)

RENEWABLES PORTFOLIO STANDARD PROCUREMENT PLAN OF BEAR VALLEY ELECTRIC SERVICE (U-913 E), A DIVISION OF GOLDEN STATE WATER COMPANY

Pursuant to the April 5, 2012 Assigned Commissioner's Ruling Identifying Issues and Schedule of Review for 2012 Renewables Portfolio Standard Procurement Plans Pursuant to Public Utilities Code Sections 399.11 et seq. and Requesting Comments on new Proposals ("Assigned Commissioner's Ruling"), Bear Valley Electric Service (U 913 E) ("BVES"), a division of Golden State Water Company, submits the following Renewables Portfolio Standard ("RPS") Procurement Plan. In accordance with the Assigned Commissioner's Ruling, BVES provides the following responses to sections 6.1 through 6.4.

I. BVES' Size and Unique Characteristics Warrant Differing Reporting Requirements.

As noted by the Assigned Commissioner's Ruling, BVES' procurement plan "should be tailored to the limited customer base and the limited resources of a small utility."[1] BVES wholeheartedly agrees as any additional requirements will have a disproportionate impact for BVES' limited customer base. Prior to the effective date of Senate Bill ("SB") 2 of the California Legislature's 2011 first extraordinary session ("SB 2 (1X)"), the Public Utilities Code[2] required the California Public Utilities Commission ("Commission" or "CPUC") to direct each electrical corporation to prepare a renewable energy procurement plan "to satisfy its

[1] Assigned Commissioner's Ruling, p. 7.

[2] Section 399.14(a).

obligations under the renewables portfolio standard." Although SB 2 (1X) updated and revised the Public Utilities Code, the current RPS planning directive similarly requires the Commission to direct each electrical corporation to "prepare a renewable energy procurement plan … to satisfy its obligations under the renewables portfolio standard."[3] Although the statutory numbering has changed, the rationale and statutory basis for the RPS procurement plan remains the same. Previously, the Commission had determined that requiring BVES to submit an RPS procurement plan was too burdensome for a small utility like BVES. According to the Commission:

> It is not fair and not necessary for any RPS administrative purpose to require the two small utilities [BVES and Mountain Utilities] to file the complex annual procurement plans we require of the large utilities. They may undertake their RPS procurement planning in any way that comports with their general planning processes.[4]

BVES appreciates the Commission's recognition of the administrative burdens for a small utility like BVES to prepare an annual RPS procurement plan. However, for BVES, additional modification of the RPS procurement planning requirements should be implemented to avoid unnecessary procurement plan reporting burdens.

Based on BVES' ability to use 100% unbundled renewable energy credits ("RECs") to meet its RPS procurement requirements,[5] its limited customer base and resources and the associated disproportionately burdensome task of submitting an annual RPS procurement plan when compared to California's large investor-owned utilities ("IOUs"), BVES requests a conditional exemption from the annual filing of its RPS procurement plan. Instead, BVES recommends that after submitting this initial RPS procurement plan, it should only be required to

---

[3] Pub. Util. Code § 399.13(a)(1).

[4] D.08-05-029, p. 17.

[5] *See* Pub. Util. Code § 399.18(b). *See also* D.11-12-052, Ordering Paragraph 16.

make another RPS procurement plan submission in the event that there are material changes to BVES' procurement strategy or circumstances. In the event that BVES' circumstances change, it would submit an updated plan at the same time that the other IOUs would submit their annual RPS procurement plan. Otherwise the Commission would be able to rely upon BVES' most recent RPS procurement plan to evaluate BVES' procurement strategy.

Not only would exempting BVES from filing annually reduce administrative burdens for BVES and costs for BVES' customers, but it is consistent with the Commission's historic approach and treatment of BVES and appropriately mitigates the administrative burden of annual RPS procurement planning and associated cost to ratepayers. Additionally, exempting BVES from filing annually would reduce the duplicative administrative burdens for the Commission in reviewing an annual plan that is likely to be substantially similar to a previously filed plan. Furthermore, Commission review of BVES' annual RPS compliance report, together with this RPS procurement plan, provides an ongoing, current presentation of BVES' RPS procurement planning strategy. BVES is statutorily relieved from the RPS portfolio content category requirements, and intends to therefore rely exclusively on RECs to meet its RPS obligations. This greatly simplifies BVES' procurement strategy and planning. Accordingly, it is reasonable for the Commission to rely on an existing RPS procurement plan of BVES if there are no material changes in circumstances or compliance strategies. This approach has tremendous upside by reducing ratepayer impacts and administrative burdens and virtually no downside as BVES' procurement planning strategy would already be available for review and comment. Therefore, BVES requests that the Commission permit relief from an annual RPS procurement planning submission requirement and instead only require BVES to submit a new RPS

procurement plan if BVES' procurement strategies or circumstances materially change from those described in its most recent RPS plan.

II. Background.

A. Renewable Competitive Solicitation Efforts of BVES.

BVES has always sought to meet its RPS procurement targets and will continue to strive to meet the new RPS targets established by the Commission. BVES has issued seven requests for proposals ("RFPs") between 2006 and 2011, all but one including requests for renewable energy and/or RECs.[6] The most recent RFP seeking RPS-eligible products was issued September 15, 2011 and, due to BVES' ability to meet RPS requirements via 100% RECs, requested offers for RECs with an option to offer bundled energy. BVES received the most bids of any of its previously issued RFPs--16 in total--and all REC-only. After paring down the bids to a short list, then identifying a successful bidder, negotiations for a long-term contract for unbundled RECs began in early 2012.

BVES has had very limited responses to its competitive solicitations. Despite BVES' diligent efforts, none of the previous bids received have resulted in signed contracts. Successful bidders offering bundled solar energy either withdrew their bids due to insurmountable or unforeseen circumstances like land availability, interconnection issues or changes in the strategy of the seller. BVES, in turn, has ceased negotiations with past successful bidders offering solar energy due to a concern over pricing as well as a rapidly changing legislative and regulatory environment. BVES is now cautiously optimistic that its ability to use unbundled RECs under the revised statute and consistent with CPUC direction will now yield a competitively secured contract that will promptly gain Commission approval.

[6] BVES issued an RFP seeking resource adequacy ("RA") on December 16, 2011. RA was the only product sought in that RFP; however, earlier that year, two RFPs seeking RPS-eligible products were issued.

B. Renewable Bilateral Transaction Efforts of BVES.

In addition to the competitive RFP solicitation efforts described above, BVES pursued several bilateral transactions with developers and suppliers, two of which did not reach the contracting phase while the other two resulted in contracts submitted for approval to the CPUC in June and July 2011.[7] While one of the CPUC-submitted bilateral contracts was approved by the CPUC, neither bilateral contract performed well.

The first bilateral contract was a ten-year contract for landfill gas-derived power from a landfill owned and operated by the County Sanitation District No. 2 of Los Angeles County ("LACSD"). While the contract was pending approval before the CPUC, in February 2011, LACSD notified BVES that its board had voted to cancel the RPS contract,[8] an action which BVES viewed as a formal dispute under the terms of the contract. On June 20, 2011, LACSD filed to become a party to the proceeding but the CPUC denied the request on June 22. On June 23, 2011, the CPUC approved the LACSD contract in Decision 11-06-030. BVES and LACSD were able to resolve their differences by agreeing that LACSD would sell BVES unbundled RECs that LACSD generated in 2010 and 2011, and in November 2011, BVES submitted Advice Letter ("AL") 258-E for the REC-only transaction that, if approved, would provide BVES RECs from 2010 and 2011.[9]

---

[7] Before pursuing the two bilateral transactions that were submitted for CPUC approval, BVES sought a transaction involving a proposed BVES-owned in-line hydro project utilizing a wastewater line near BVES' service territory. The Board of the local water authority, however, voted not to move forward with the project. In addition, BVES also explored a joint project with a major cement company near BVES' territory that would have included wind energy; however, BVES determined that cost, viability and timeline issues presented a level of risk such that it stopped pursuing the project

[8] LACSD decided to shutter the generation plant identified in its contract with BVES.

[9] The total amount of RECs included 20,793 RECs generated in 2010 and the remaining 15,650 RECs were generated in 2011. Further, BVES' bundled renewable energy transaction with LACSD had already been approved by D.11-06-030

BVES' second long-term bilateral contract was executed with BioEnergy Solutions, LLC ("BioEnergy"). BioEnergy produced biomethane, also known as biogas or digester gas, by processing cow manure. Under the ten-year contract, BioEnergy was required to inject pipeline quality biogas into Pacific Gas and Electric Company's ("PG&E's") natural gas transmission pipeline for ultimate delivery to BVES, who would then initially utilize its Bear Valley Power Plant ("BVPP") to generate renewable energy. In late 2010, BioEnergy ceased biogas production at its facility, preventing BioEnergy from meeting its contractual obligations to BVES. BVES and BioEnergy executed an option agreement requiring BioEnergy to offer to sell biogas to BVES at a price equal to the lowest price of biogas previously offered by BioEnergy to another similar purchaser, when and if biogas production resumes. That option agreement was the primary document in a settlement agreement with the Division of Ratepayer Advocates ("DRA") and was approved in June 2011 in Decision 11-06-023.

BVES believes the difficulty it has experienced over the past several years in acquiring RPS resources stems, in part, from its relatively small annual procurement requirement when compared to the three largest California IOUs as well as large municipal utilities. Renewable developers have seemed unwilling to sell a portion of a power plant's output to BVES when they can sell their project's entire output to one of the large IOUs or municipal utilities in the state. The need to shape resources to BVES' demand and energy requirements and BVES' winter peak has even further frustrated the effort to acquire resources.

However, it appears that BVES' probability of success in acquiring RPS-eligible products is improving due to more favorable legislation and regulatory rules. Decision 11-12-052 formally excludes BVES from adhering to the RPS portfolio content categories so long as all

other procurement requirements for compliance with the RPS are also met.[10] Based on this exemption from the portfolio content category restrictions, BVES can satisfy its entire procurement obligation under the RPS program using procurement from the third portfolio content category (§ 399.16(b)(3)), including unbundled RECs. Because unbundled RECs are likely to be the least expensive of the portfolio content category products, with lower costs to ratepayers, it makes sense for BVES to procure unbundled RECs to meet its RPS targets.

III. Assessment of RPS Portfolio Supplies and Demand - § 399.13(a)(5)(A) (Section 6.1 of the Assigned Commissioner's Ruling).

Section 6.1 of the Assigned Commissioner's Ruling requests:

> Provide a written description assessing annual or multi-year portfolio supplies and demand to determine the retail seller's optimal mix of eligible renewable energy resources. In addition, the assessment should consider, at a minimum, a 10-year planning horizon. This written description must include the retail seller's need for RPS resources with specific deliverability characteristics, such as, peaking, dispatchable, baseload, firm, and as-available capacity. It should also address the retail seller's need for and plan for procuring resources that satisfy the three portfolio content categories of RPS procurement. This written description must explain how the proposed renewable energy portfolio will align with expected load curves and durations. It must also explain how quantitative analysis provided in response to section 6.5 supports the assessment.

A. Assessment of annual or multi-year portfolio supplies and demand (forecast out to 10-years).

BVES will endeavor to take full advantage of RECs to meet its RPS obligations. In July 2011, BVES hosted an "RPS Summit" attended by top BVES management and staff, Golden State Water Company ("GSWC") executive management, GSWC/BVES outside counsel and key consultants. The purpose of the summit was to review RPS policy overall and BVES' RPS

[10] *See* D.11-12-052, Ordering Paragraph 16.

procurement history and to agree upon a unified procurement strategy to achieve RPS compliance.

The RPS Summit attendees determined a multi-pronged strategy for RPS compliance:

1. BVES would pursue REC-only transactions for RPS compliance. The impetus for that component of the strategy lay mainly in the fact that BVES was permitted the unrestricted use of unbundled RECs in SB 2 (1X) as resolved in Decision 11-01-025. The REC decision verified BVES' exemption from the procurement cap imposed on other California retail sellers.

2. SB 2 (1X) expanded the RPS program to 33% by 2020 and exempted BVES from the quantity requirements of the different portfolio content categories or "buckets" of RPS products.[11] These changes enable BVES to use RECs for 100% of its RPS compliance.

3. Unlike bundled renewable energy which can be subject to intermittent production, and thus delivery, RECs would more easily be incorporated into BVES' supply portfolio. Therefore, RECs present the "least cost, best fit" ("LCBF") RPS product option for BVES' RPS compliance.[12] The RPS statute requires utilities to select renewable resources that are least cost, including the direct costs of renewable energy generation and any indirect costs due to integration of the resource and needed transmission investment. In addition, utilities are required to consider renewable resources that best fit their system needs.

BVES will issue another RFP for REC-only transactions no later than the end of the third quarter of 2012 and annually thereafter until such time that it has successfully completed and executed a CPUC-approved contract(s) to meet its RPS targets.

B. BVES' need for resources with specific deliverability characteristics, including peaking, dispatchable, baseload, firm and as-available.

While the RPS procurement obligation is an energy-based requirement, because BVES can utilize RECs to meet its RPS procurement requirements, there is no need to secure procurement from resources with specific delivery or operational characteristics. BVES will meet its resource adequacy ("RA") requirements though traditional generation procurement.

---

[11] BVES filed comments on October 27, 2011 supporting the CPUC's interpretation of SB 2 (1X) exempting BVES from adhering to the product content category requirements. BVES' comments are available at http://docs.cpuc.ca.gov/efile/CM/146454.pdf.

[12] LCBF criteria were determined in Decision 04-07-029.

BVES will continue to procure and schedule energy deliveries with the California Independent System Operator ("CAISO"), procuring conventional energy and Ancillary Services.

C. Need for and plan for procuring portfolio content category requirement.

As described above, BVES is exempted from meeting the portfolio content category requirements. Accordingly, BVES will use its traditional LCBF process to procure cost-effective REC-only transactions to meet its RPS targets.

D. Description of how procurement will meet BVES' load forecasts.

BVES will seek to procure sufficient RPS-eligible RECs to meet its forecasted targets for each multi-year compliance period. One new issue that BVES will have to account for in its procurement is the risk of stranded procurement. Under the new RPS program, certain procurement from short term contracts and § 399.16(b)(3) procurement cannot be carried forward from one compliance period to the next. Accordingly, BVES will seek to avoid over-procuring any Category 3 RECs from short term contracts to avoid the risk of stranded procurement, or resell surplus procurement if such transactions can be timely completed.

IV. Potential Compliance Delays - § 399.13(a)(5)(B) (Section 6.2 of the Assigned Commissioner's Ruling).

Section 6.2 of the Assigned Commissioner's Ruling asks retail sellers to:

> Describe in writing any potential issues that could delay RPS compliance, including inadequate transmission capacity and the relationship, if any, to deliveries and project development delays by, for example, permitting, interconnection, or other circumstances. Describe the steps taken to account for and minimize these potential compliance delays. The potential compliance delays included in the written description must be reflected in the quantitative analysis provided in response to section 6.5. Given this analysis, discuss how the compliance delays will impact the retail seller's net short and its procurement decisions.

A. Description of potential issues that could delay RPS compliance.

Based on BVES' ability to use RECs for 100% of its RPS compliance, BVES will continue to solicit REC transactions from counterparties who own or are developing renewable generation facilities. Therefore, there is a risk that permitting or other construction delays by a counterparty developing renewable generation facilities will impact BVES' ability to comply with the RPS procurement requirements, assuming insufficient replacement supplies exist. Additional issues that could delay RPS compliance include withdrawal of bids or default by successful bidders (which has occurred in the past), limited availability of RECs and further regulatory or legislative changes that impede renewable contracting or alter eligibility. As a small utility, BVES could meet its procurement targets through a contract with one party, thereby having "all its eggs in one basket," which presents a risk should the contract fail to deliver/perform.

B. Description of steps taken to minimize compliance delays.

BVES has recently experienced a greater number of responses to its renewable and REC-only solicitations, which should, in turn if the trend continues, help BVES meet its renewables goals going forward. BVES will be issuing additional renewable RFPs and should there be sufficient responses, BVES will be better positioned with respect to compliance with its RPS procurement requirements.

C. Description of the impact of delays on BVES' net short and procurement decisions.

As discussed above, compliance delays are less likely to impact BVES based on BVES' ability to use RECs to meet its RPS procurement requirements. However, to the extent that delays arise and there is a shortage of available RECs on the market, such a shortage could

prevent BVES from meeting its RPS procurement goals. Similarly, the timing of obtaining CPUC-approval of REC contracts could prevent BVES from meeting its RPS goals.

V. Project Development Status Update - § 399.13(a)(5)(D) (Section 6.3 of the Assigned Commissioner's Ruling).

Section 6.3 of the Assigned Commissioner's Ruling provides:

> Provide a written status update on the development schedule of all eligible renewable energy resources currently under contract but not yet delivering generation. This written status update may rely upon the most recent filed Project Development Status Reports but must elaborate upon these reports. Providing a copy of the Project Development Status Report will not be a sufficient response. The status updates provided in the written description must be reflected in the quantitative analysis provided in response to section 6.5, below. Given this analysis, discuss how the status updates will impact the retail seller's net short and its procurement decisions. Project Development Status Reports shall continue to be filed twice a year based on a schedule directed by the Commission's Energy Division Director.

A. Update on development schedule for resources not yet online.

BVES is contracting for RECs from a long-term contract with a developer of renewable facilities in the early stages of construction.[13] Since being named in early 2012 as the successful bidder to BVES' September 2011 RFP, the supplier has changed the estimated commercial operation date from June 2012 to December 2012. This delay presents a risk to BVES' RPS compliance efforts.

B. Impact of schedule on BVES' net short and procurement decisions.

BVES is dependent on the timely construction of renewable generation facilities as described in section V.A. above. BVES does not have any other renewable facilities under development.

[13] At the time of this writing, BVES and the supplier/counterparty have executed a Master enabling agreement. The supplier intends to sell the electricity output "unbundled" to another IOU. The RECs will be sold separately from the energy.

VI. Risk Assessment - § 399.13(a)(5)(F) (Section 6.4 of the Assigned Commissioner's Ruling).

Section 6.4 of the Assigned Commissioner's Ruling asks retail sellers to provide the following:

> Provide a written assessment of the risk of failure to build or of construction delay for eligible renewable energy resource projects currently under contract. The risk assessment provided in the written description must be reflected in the quantitative analysis provided in response to section 6.5. Given this analysis, discuss how the risk assessment will impact the retail seller's net short and its procurement decisions. The written assessment must explain how quantitative analysis provided in response to section 6.5 supports this response.

A. Assessment of failure risk of contracts.

As discussed in section V. above, BVES is contracting for a long-term REC transaction. Although BVES expects to submit the transaction to the CPUC for approval, unforeseen events could occur that prevent submission of the contract. BVES issues at least one RPS RFP per year and will continue to do so until such time that CPUC-approved contracts are in place.

B. Impact of risk on BVES' net short and procurement decisions.

Any inability to attain CPUC approval will adversely impact BVES' net short RPS position and impact BVES' future procurement decisions. Additionally, project construction delays would also likely adversely impact BVES' net short and cause BVES to alter its procurement decisions in the future.

VII. Conclusion.

Going forward, BVES will continue to make all reasonable efforts to meet its RPS procurement requirements. Based on BVES' exemption from the portfolio content category requirements, BVES plans to use RECs to meet its RPS targets. BVES will seek to ensure that there is no stranded procurement under the existing prohibition on carrying forward procurement

from short term contracts or § 399.16(b)(3) products. BVES has taken steps to reduce compliance delays and contract risks based on its ability to use RECs to meet its entire RPS obligation, but cannot guarantee success as it is largely dependent on the willingness of counterparties to contract with BVES given its relatively small demand and other contractual risks that are unique to a small utility like BVES. Similarly, as BVES' procurement strategy is relatively simple and is unlikely to change, BVES requests that it be exempted from filing an RPS procurement plan on an annual basis and instead only be required to submit a plan in the event that its procurement strategy changes.

Dated: May 23, 2012

Respectfully submitted,

Jedediah J. Gibson
Ellison, Schneider & Harris, LLP
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512
Email: jjg@eslawfirm.com

Attorneys for Bear Valley Electric Service

VERIFICATION

I am the attorney for Bear Valley Electric Service ("BVES"), a division of Golden State Water Company, and am authorized to make this verification on its behalf. BVES is absent from the County of Sacramento, California, where I have my office, and I make this verification for that reason. 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 forgoing is true and correct.

Executed on May 23, 2012 at Sacramento, California.

Jedediah J. Gibson
Ellison, Schneider & Harris, LLP
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512
Email: jjg@eslawfirm.com

Attorneys for Bear Valley Electric Service