STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

F I L E D
06-09-11
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June 9, 2011

Agenda ID #10470
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 10-06-003

This is the proposed decision of Administrative Law Judge (ALJ) Darwin E. Farrar. It will appear on the Commission's June 23, 2011 agenda. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Pursuant to Rule 14.6(c), the Commission may reduce or waive the period for public review and comment in an uncontested matter where the decision grants the relief requested. That is the case here. Comments on the proposed decision must be filed by June 21, 2011, and no reply comments will be accepted.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Farrar at edf@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ CHARLOTTE F. TERKEURST for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:avs

Attachment

Decision **PROPOSED DECISION OF ALJ FARRAR** **(Mailed 6/9/2011)**

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 Approval of RPS Contract with County Sanitation District No. 2 of Los Angeles County, and for Authority to Recover the Costs of the Contract in Rates.	Application 10-06-003 (Filed June 8, 2010)

DECISION ON APPROVAL OF RPS CONTRACT AND FOR AUTHORITY TO RECOVER THE COSTS OF THE CONTRACT IN RATES

1. Summary

Golden State Water Company, on behalf of its Bear Valley Electric Service Division (Bear Valley or BVES), filed for advanced approval of the terms and conditions of a proposed Power Purchase Agreement (PPA) with the Los Angeles County Sanitation District No. 2 for landfill gas-generated electricity. In addition, BVES seeks authority to establish a memorandum account to track unrealized gains and/or losses on the PPA. The application was unopposed.

This decision finds Bear Valley is still subject to the ratemaking settlement agreement adopted in Decision 02-07-041 which included a cost cap that is in effect until the earliest of either August 31, 2011 or certain other conditions are met. Therefore, subject to the ratemaking settlement, the agreement is recoverable in rates without further review through August 31, 2011. We approve the remainder of the contract cost recovery after August 31, 2011, although BVES must exercise prudent administration of the contract over its life.

This decision also grants BVES's additional request to create a memorandum account to record unrealized gains and losses on the PPA. This proceeding is closed.

2. The Purchase Power Agreement

Bear Valley Electrical Service Division (BVES) is a subdivision of Golden State Water Company (GSWC). BVES provides retail electric service to the Big Bear Lake resort area in the San Bernardino Mountains. The BVES service territory is comprised primarily of residential customers. BVES provides service to approximately 21,500 full-time and part-time residents, and approximately 1,400 commercial, industrial, or public-authority customers. BVES also provides service to two ski resorts in its territory.

BVES' loads and energy requirements have remained fairly constant since 2004; BVES' peak load has had an annual growth rate of 2.4 percent (an increase of only 6 megawatts (MW)). In 2008 and 2009 BVES' annual energy requirements declined. BVES' most recent projections reflect annual energy requirement increases for 2010 through 2014, but at a slower rate than projections in BVES' most recent Integrated Resource Plan (IRP). BVES' current resources include the BVES Power Plant (a 8.4 MW capacity power plant comprised of seven 1.2 MW natural gas-fired generating units), a master power purchase agreement with Shell Energy North America L.P. (Shell PPA), plus four separate confirmation agreements for four distinct power purchase products, with an effective date of January 1, 2009.[1]

[1] The Shell PPA and four confirmations were approved by the Commission in Decision (D.) 09-05-025.

Los Angeles County Sanitation District No. 2 (LACSD) operates a landfill gas-to-energy facility at the Palos Verdes Landfill in Rolling Hills Estates, California (the Project). LACSD has owned and operated the Project for over 20 years, using conventional Rankine Cycle Steam Power Plants and landfill gas as fuel to generate electricity. LACSD and BVES entered into bilateral negotiations in early 2009 and executed a PPA in the fall of 2009.[2] Under the PPA, BVES will purchase all of the output of the Project, up to three MWs per hour, for a term of 10 years.[3]

3. BVES' Procurement

California Pub. Util. Code § 454.5 requires electric utility companies to file a proposed electricity procurement plan for review and approval by the California Public Utilities Commission (Commission).[4] Section 454(i) also provides that an electrical corporation serving fewer than 500,000 customers in California may file a request for exemption from the § 454.5 procurement plan requirements. BVES filed for an exemption under § 454.5, via advice letter, in August 2008. On February 20, 2009, in Resolution E-4232, the Commission granted BVES' request.[5] Subsequently, in D.08-05-029 the Commission stated that BVES and other small utilities may undertake their Renewable Portfolio

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[2] An amended PPA was entered into on May 1, 2010 to add standard terms and conditions required by the Commission in D.10-03-021.

[3] Application at 6.

[4] All statutory references are to the California Public Utilities Code unless otherwise stated.

[5] Resolution E-4232 and see also D.05-11-025.

Standard (RPS) procurement planning "in any way that comports with their general planning process."[6]

BVES' primary document for planning, evaluation, and acquisition of generation resources to meet its forecasted energy requirements is its 2009 IRP.[7] BVES states that "the amount and type of resources included in the IRP are intended to comply with California law, Commission decisions, renewable energy requirements and greenhouse gas emissions limits."[8]

4. Consistency with Commission Guidelines for Bilateral Contracting

This Commission has developed guidelines pursuant to which utilities may enter into bilateral contracts for RPS-eligible energy. In D.03-06-071, the Commission authorized entry into bilateral contracts provided the contracts do not require Public Goods Charge (PGC) funds and are prudent.[9] Subsequently, in D.06-10-019, the Commission held that bilateral contracts were permissible provided they were at least one month in duration.[10] The Commission concluded that utilities' bilateral RPS contracts must be submitted for approval

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[6] D.08-05-029 at 17.

[7] Every year BVES prepares a five-year IRP. At the time BVES filed its application, the June 2009 IRP was BVES' most current IRP.

[8] Application at 7.

[9] Neither the settlement agreement entered into by BVES and approved in D.08-05-029 nor the instant application provide for receipt of PGC funds. We therefore conclude that the bilateral contracts now at issue do not require any PGC funds.

[10] As noted in section 2 above, the contracts at issue are for a term of 10 years. BVES therefore complies with the requirement that bilateral contracts must be at least one month in duration.

by advice letter and that they must be "reasonable."[11] Finally, as BVES notes, bilateral contracts must also contain the Standard Terms and Conditions (STCs) set forth in D. 04-06-014, D.08-04-009 (as modified by D.08-08-028), and D.10-03-021 (as modified by D.11-01-025).

4.1. Submission by Application

In D.02-07-041, the Commission approved a settlement agreement that, among other things, increased BVES' electric surcharges through its Power Purchase Adjustment Clause (PPAC). The settlement agreement included a cap on the weighted average annual cost of $77.00 per megawatt hour in the calculation of the energy charge component of the PPAC. In particular, in D.08-05-025 we stated:

> In order to allow BVES to undertake only one procedural step in seeking approval of RPS contracts, we will require that BVES submit all 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. (D.08-05-029 at 29.)

BVES is still subject to the ratemaking settlement agreement adopted in D.02-07-041 which included a cost cap that is in effect until either August 31, 2011 or certain other conditions are met.[12] Thus, BVES properly seeks approval of the bilateral contracts via application rather than advice letter.[13]

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[11] *Id.*

[12] See D.02-07-041, Finding of Fact 3-6 for other conditions.

[13] In D.06-10-019, we stated that bilateral RPS contracts must be submitted for approval by advice letter. However, this statement must be taken in context. At issue in D.10-03-021 was whether or not to "allow utilities to present for our approval, via advice letter, contracts offered by generators, in response to solicitations seeking long-term contracts for new RPS-eligible generation, that are for a period less than

Footnote continued on next page

4.2. Standard Terms and Conditions

BVES acknowledges that bilateral contracts must also include the STCs established in D.04-06-014 as well as the STCs for Renewable Energy Credits (RECs).[14] In D.08-04-009 (as modified by D.08-08-028) we compiled the current Commission-adopted language for the STCs used in contracts pursuant to the RPS. As set forth in D.08-04-009, there are 13 STCs of which four (numbers 1, 2, 6, and 7) are non-modifiable and nine are modifiable.[15]

> Each contract used for RPS compliance by an investor-owned utility (IOU), including a small or multi-jurisdictional utility (SMJU), must contain the 4 non-modifiable STCs. Each contract used for RPS compliance by a load-serving entity (LSE) other than an IOU must also contain the non-modifiable STCs, with the exception of STC 1.[16] (D.08-04-009 at 2, citing D.04-06-014 (Appendix A), D.06-10-019, D.07-02-011, D.07-05-057, and D.07-11-025 (Attachment A).)

The contract for which BVES now seeks approval contains modifications to non-modifiable STCs numbers 2 and 6.

In Application (A.) 07-01-003, Southern California Edison Company (SCE) sought approval of an RPS power purchase agreement with Imperial

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10 years. (D.10-03-021 at 28.) Thus, the statement in D.10-03-021 addressed whether or not the advice letter process could be used for contracts that are less than 10 years. Here the contract is for a period of 10 years.

[14] See D.10-03-021, Appendix C.

[15] See D.08-08-009 at 2-3.

[16] With regard to modifiable STCs, "seller and buyer (inclusive of all LSEs under the RPS program) may negotiate different language for each modifiable STC (or agree to delete the term if it is not applicable), as long as the result remains consistent with all applicable laws and regulations." (D.08-08-009 at 3, citing D.04-06-014, Appendix A; D.07-11-025, at 22-23 and 26, and Ordering Paragraph 1.)

Valley Resource Recovery Company, LLC (IVRR). The contract at issue contained modifications to certain terms and conditions, some of which were identified as non-modifiable by D.04-06-014. As we stated in D.07-04-039, in granting SCE's application "[i]t was principally for this reason that SCE was prompted by the Energy Division to seek approval of the IVRR contract through the filing of an application rather than an advice letter."[17] In addition to claiming that the modifications were minor, SCE asserted that the modifications were commercially necessary and/or substantively immaterial to the terms contained in D.04-06-014. The issue was set forth in D.07-02-011 as follows:[18]

> SCE says its counterparties have found some Commission non-modifiable terms (e.g., "assignment") to be unacceptable. SCE also says some standard terms do not work in the context of SCE's entire 2007 Proforma Agreement (e.g., definition of "as-available" is a remnant of the Edison Electric Institute agreement that no longer makes sense, according to SCE). SCE asserts that it would need to publicly state it would be unable to enter into its own Proforma Agreement if SCE is required to modify its Proforma Agreement to comply with the exact terms in D.04-06-014. SCE contends this would be a waste of time and resources.
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> It has now become apparent (through recent advice letters, applications, the petition for modification of D.04-06-014, and comments on the proposed decision by parties other than SCE) that not only SCE but also other IOUs have

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[17] D.07-04-039 at 9-10.

[18] The resolution of SCE's IVRR contract term issue was impacted by a petition for modification of D.04-06-014 filed by SCE and Pacific Gas and Electric Company (PG&E) and the issuance of D.07-02-011 which conditionally accepted procurement plans for 2007 RPS solicitations and addressed the issue of modifying contract terms and conditions.

> changed standard terms and conditions over time (both modifiable and non-modifiable).[19]

Consistent with D.07-02-011, in D.07-04-039 we approved SCE's IVRR contract without requiring that the non-modifiable STCs conform to those adopted in D.04-06-014.

While subsequent decisions have addressed the question of when and how universal and/or substantive changes may be made to the non-modifiable STCs (see for example, D.08-04-009), few have addressed non-substantive changes to the non-modifiable STCs. For example, in D.07-11-025, which addressed a petition to modify D.04-06-014 by SCE and PG&E, we approved non-substantive changes to some of the non-modifiable STCs but did not afford parties the opportunity to tailor the substantive, non-modifiable STCs (such as "Green Attributes") to meet their specific project characteristics.

In approving non-substantive changes to the non-modifiable STCs, D.07-11-025 established that while RPS contracts may continue to be submitted for Commission consideration by advice letter, Energy Division should reject an advice letter that makes changes to modifiable or non-modifiable standard terms and conditions.[20] Thus, while D.07-11-025 and D.07-02-011 make clear that substantive changes cannot be made to the non-modifiable STCs, and that the advice letter process is inappropriate where there are changes to the non-modifiable STCs, neither decision forecloses an application for approval of a contract with minor, non-substantive changes to the non-modifiable STCs. Here BVES asks that the Commission approve the modified STCs (without further

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[19] D.07-02-011 at 51-55.

[20] D.07-11-025 at 29.

modification) since the modifications are minor conforming modifications which are essential to the negotiated agreement between the contracting parties, consistent with the principles behind the STCs, and consistent with all applicable laws and regulations.

We agree that BVES' modifications are non-substantive changes that represent project specific identifying language, or language that provides greater ratepayer protections. For example, in STC 6, BVES replaces the term "Renewables" with "Renewable."[21] Similarly, BVES inserts the term "Generating Facility" instead of "Project," which is used in STC 6. Also, where STC 6 provides that a subsequent change in law that causes certain representations to be materially false or misleading shall not be a default, BVES modifies the term to state that a subsequent change in law that causes certain representations to be incorrect in any way shall not be a default.[22] We agree with BVES that this modification raises the standard to which the Seller, would be accountable and thereby affords greater protection to BVES and its ratepayers.[23] Finally, BVES modifies STC 6 by replacing the word "agreement" with "confirmation." The confirmation is included as an attachment to Appendix G (the Master Power Purchase and Sale Agreement) in BVES' application. By its terms, the confirmation is "pursuant to, in accordance with, and subject to the applicable provisions of" the Master Power and Purchase Sale Agreement.[24]

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[21] Application, Attachment to Appendix D at D-11.

[22] *Id*.

[23] See Application, Appendix D at D-4.

[24] See Application, Appendix G.

Because BVES proposes minor, non-substantive modifications to the non-modifiable STCs that provide equivalent or greater ratepayer protections as the terms contained in D.04-06-014, we find the modifications permissible.

4.3. Reasonableness and Prudency

At the time BVES filed its application, its June 2009 IRP was BVES' most current IRP. The June 2009 IRP sets forth BVES' efforts to acquire renewable energy resources to comply with California's RPS requirements.[25] According to BVES, the primary difficulty it faces in acquiring RPS resources is its relatively small annual electrical requirements. BVES believes that renewable energy developers are 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 larger utilities.[26] BVES issued three requests for proposals for renewable resources, with limited responses and no resulting contracts. In the wake of these unfruitful efforts, BVES pursued RPS opportunities through a bilateral-contracting processing. We believe this course of action to be both prudent and reasonable.

5. The Impact of the PPA

5.1. Surplus Energy

The PPA is for a baseload resource. BVES anticipates that the additional 2.4 Megawatt-hours (MWh) of renewable energy from the PPA may require an increase in surplus sales.[27] Specifically, BVES assumed energy deliveries under the PPA would begin on September 1, 2010, then projected a surplus energy increase of 3,226 MWhs for September through December 2010.

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[25] The June 2009 IRP is attached to the application as Exhibit 1.

[26] See Exhibit 1 at 25.

[27] Application, Exhibit 2 at 7.

At current market prices (approximately $45/MWh for 2011 – 2012 baseload energy), this projected increase in surplus energy sales would add approximately $140,000 to total power supply costs for all of 2011.[28] Starting in 2012, when the seasonal baseload product agreement under the Shell PPA expires, BVES does not expect to have a significant amount of surplus energy.

5.2. The Existing Settlement Period

BVES is subject to the settlement agreement adopted in D.02-04-041 which addresses recovery of energy costs through August 31, 2011. The settlement agreement adopted in D.02-07-041 set a cap of $77.00 per MWh for the weighted average annual cost used to calculate the Energy Charge component of the Purchased Power Adjustment Clause balancing account. (*See*, D.02-04-041, Finding of Fact 5, and Ordering Paragraph 3.) Nothing in this decision in any way alters, amends, or otherwise modifies the previously adopted settlement or its operation for rate recovery of energy costs. Therefore, we find that BVES is able to recover its net costs for energy delivered to retail customers acquired pursuant to the LACSD PPA through August 31, 2011 (the end of the settlement period), subject to the limits of that settlement.

5.3. The Post Settlement

The balance of the LACSD PPA (the period beyond August 31, 2011) is not subject to the settlement agreement. The PPA with LACSD has a purchase price of $110/MWh at the delivery point. This purchase price is fixed for the life of the PPA. The levelized cost of the PPA is also $110/MWh. This levelized price is above the 2009 Market Price Reference (MPR) of $84.48/MWh for a

[28] As this decision is being issued in the latter half of 2011, we believe these anticipated costs will be significantly lower.

10-year contract set forth in Resolution E-4298.[29] BVES seeks a finding that the costs are reasonable.[30]

In defense of the LACSD PPA, BVES notes that it is required to acquire renewable resources to meet 20 percent of its retail load requirements by 2010. BVES explains that, in response to its 2006 requests for proposals (RFPs) for renewable resources, it received three renewable energy project proposals. Prices ranged from $175/MWh (excluding transmission costs, which were anticipated to be substantial) to $335/MWh for these projects. In 2007, BVES issued RFPs for capacity and energy, including an option for bidders to submit bids for renewable resources. BVES received three proposals for renewable energy projects or hybrid renewable energy projects as a result of the 2007 RFP. BVES rejected each of these proposals as being imprudent.[31] Only two proposals were received in response to a 2008 RFP solicitation by BVES. The cost of the first of these two contracts ranged between $184.50/MWh and $260/MWh, depending on whether the contract costs are levelized over twenty or ten-years (respectively). The levelized cost of the second contract was $222.46/MWh over

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[29] BVES' application and calculations assume a start date in 2010.

[30] The application was unopposed. Therefore, our record is limited to the application and prepared testimony submitted by BVES.

[31] One proposal with a price of approximately $107/MWh was withdrawn due to uncertainty regarding the bid price and the bidder's ability to acquire essential land rights for the project. A second project was withdrawn because BVES' supply needs could not accommodate 28 MW of baseload energy. The third proposal was rejected because it required BVES to essentially turn over all of its power supply activities to the bidder and allow the bidder to arbitrage energy in the marketplace on its own behalf.

a twenty-year period, and BVES notes that the cost would be substantially greater if the debt had to be recovered over a ten-year period.[32]

BVES believes "[t]hese three successive, unproductive RFP processes demonstrated a constrained and uncompetitive market for acquisition of relatively small amounts of RPS-eligible energy."[33] In the wake of these unfruitful efforts, BVES pursued RPS opportunities through a bilateral-contracting processing. Though the levelized cost of the LACSD PPA of $110/MWh is above the applicable MPR of $84.48/MWh for a ten-year contract, the cost per MWh of the LACSD PPA is less than any bid solicitation BVES received (which was not later withdrawn). We will therefore approve the contract terms for the post-settlement period and BVES may recover its post-August 31, 2011 costs subject to meeting its obligation to prudently administer the LACSD PPA.

5.4. Conclusion

On balance it appears that while the LACSD PPA may produce an energy surplus and related additional cost, at this time any such surplus should be short in duration and, if managed properly, of minimal cost. Consistent with this outcome, we will approve the contract terms for the post-settlement period and BVES may recover its post-August 31, 2011 costs subject to meeting its obligation to prudently administer the LACSD PPA. Nothing in this decision in any way alters, amends, or otherwise modifies the previously adopted settlement or its operation for rate recovery of energy costs, and BVES is able to recover its

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[32] BVES states that "[i]t is not possible to accurately estimate the cost over a ten-year period since the bidder's initial investment is not know." Application, Exhibit 2 at 5.

[33] Application, Exhibit 2 at 5.

net costs for energy delivered to retail customers pursuant to the LACSD PPA through August 31, 2011, subject to the limits of the settlement.

6. Memorandum Account Request

6.1. Summary

This decision allows BVES to establish a non-interest bearing memorandum account to track the unrealized gains and losses otherwise imputed to the LACSD PPA as a consequence of complying with the Financial Account Standards Board's (FASB) Statement of Financial Accounting Standards (SFAS) No. 133, "Accounting for Derivative Instruments and Hedging Activities." The sole intention in granting this request is to preclude the unnecessary recognition in BVES' financial statements of any unrealized gains or losses which may occur as a result of valuing the outstanding balance of the LSCSD PPA at market prices compared to the actual prices contained in the contracts. BVES can only recover the actual and reasonable costs in rates as it acquires energy from LACSD under the terms of the PPA and directly resells that energy to its customers.

6.2. Accounting Issue

BVES states that it believes for accounting purposes, long-term power contracts, such as the LACSD project, qualify as derivative instruments under SFAS No. 133, which in turn requires BVES to record derivatives on its balance sheet as assets and liabilities, and to measure those instruments at the fair value. BVES asserts the LACSD PPA would be classified as a derivative pursuant to SFAS No. 133. Applying SFAS No. 133 to the PPA would mean recognizing unrealized gains and unrealized losses on an outstanding purchased power contract which would affect reported earnings, even though when the power

contract is finally settled any unrealized gains or losses recognized under SFAS No. 133 are reversed.[34] (Application at 5.)

6.3. Discussion

A memorandum account would allow BVES to track, solely for financial reporting purposes during the life of the PPA, any unrealized gains or losses on the outstanding balance of the contract and record either an offsetting "refund" to ratepayers of an imputed market gain or an under collection of an imputed market loss. During contract performance, BVES will record and recover only its actual costs under the terms of the contract for energy delivered to retail customers.

BVES notes that the Commission previously granted similar authority to Sierra Pacific Power Company in D.02-10-054, and to BVES in D.09-05-025. In D.02-10-054, we found:

> When the contract is actually settled, the expense is recognized as the actual contract price, the net gains or losses previously recognized would be reversed, and the net offsetting regulatory assets or liabilities would be reversed resulting in no net gain or loss. (Finding of Fact 7.)

Similarly, in D.09-05-025 the Commission granted BVES authority to establish a non-interest bearing memorandum account to record refunds or under collections to offset the unrealized gains or losses from agreements created by the financial reporting impacts of SFAS No.133.[35]

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[34] For example, if the contract price is $10 per unit and the market value is $12 per unit, Bear Valley would have an imputed, but unrealized, gain of $2 per unit. Conversely, a market value of $9 would result in an unrealized loss of $1 per unit.

[35] D.09-05-025, Ordering Paragraph 3 at 16.

Lastly, we note that there would be no public benefit if BVES had to recognize unrealized gains or losses on its balance sheet during the life of the PPA related to the cost of energy which will be delivered to retail customers in the remaining years of the PPA. BVES did not seek and therefore does not have advance authority from the Commission to hedge or trade the commodity underlying the LACSD PPA and BVES, therefore, cannot record for rate recovery any realized gains or losses for any trades or sales of energy acquired under the LACSD PPA. Thus, there would be no impact on rates beyond the recovery of the actual costs of the LACSD PPA for energy delivered to retail customers by adopting a memorandum account.

We therefore find BVES' request is reasonable and grant BVES' request for a memorandum account. BVES must file a Tier 2 advice letter proposing the specific language for the memorandum account with the Commission's Energy Division will become effective upon approval as appropriate at the time. We find no reason to make the memorandum account a blanket authority and so will direct BVES to file for authority before we allow subsequent energy contracts to be included in the balancing account.

6.4. Conclusion

We find it is reasonable to allow BVES to use a non-interest bearing memorandum account to offset the unrealized gains or losses attributable to the application of SFAS 133 to the LACSD PPA. We grant this on the understanding that no actual additional cost will be recovered or refunded that is not directly incurred as a part of the good faith contract performance.

7. Categorization and Need for hearings

In Resolution ALJ 176-3256 dated June 24, 2010, the Commission preliminary categorized this application as Ratesetting and preliminary

determined that hearings were necessary. Because the application is unopposed, a public hearing is not necessary.

8. Reduction of Comment Period

This is an uncontested matter in which the decision grants the relief requested. In such case, the comment period may be shortened or waived (§ 311(g)(2) and Rule 14.6(c) of the Commission's Rules of Practice and Procedure). We shorten the comment period so that comments must be filed by June 21, 2011, and waive reply comments.

Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and Darwin E. Farrar is the assigned ALJ in this proceeding.

Findings of Fact

1. BVES is a public utility subject to the jurisdiction of this Commission.
2. BVES prepared an integrated resource plan to serve retail customers.
3. BVES issued several requests for proposals for energy and it reviewed and analyzed the various proposals from potential suppliers.
4. BVES negotiated a contract with LACSD for energy products identified in the integrated resource plan.
5. The duration of the LACSD PPA is 10 years.
6. BVES is subject to the settlement agreement adopted in D.02-12-041 which caps energy cost recovery through August 31, 2011.
7. SFAS No. 133 requires BVES to recognize unrealized gains or losses on the contract when the contract is marked to market for financial reporting.
8. A non-interest bearing memorandum account would recognize refunds or under collections offsetting the unrealized gains or losses for financial reporting purposes.

9. A non-interest bearing memorandum account would offset unrealized gains or losses to stabilize financial reporting.

Conclusions of Law

1. At the time it submitted this application, BVES was required to submit all PPAs for RPS-eligible power for approval by means of an application rather than an advice letter.

2. The electric energy sold or dedicated to BVES pursuant to the LACSD PPA constitutes procurement by BVES from an eligible renewable energy resource for the purpose of determining BVES' compliance with its obligations to procure such resources pursuant to the RPS legislation and other applicable law. However, nothing in this decision shall be read to allow generation from a non-RPS eligible renewable energy resource under the LACSD PPA to count towards BVES' RPS compliance obligation.

3. All procurement under the LACSD PPA should count towards any annual procurement target established which is applicable to BVES.

4. The substantive terms of the non-modifiable STCs established in D.08-04-009 (as modified by D.08-08-028) cannot be modified.

5. Contracts with changes to the non-modifiable STCs cannot be approved by the advice letter process.

6. Any changes to the non-substantive terms of the non-modifiable STCs must provide the same or greater ratepayer protections.

7. Before August 31, 2011, BVES may only recover the incurred costs of the LACSD PPA for energy delivered to retail customers subject to the settlement adopted in D.02-10-041.

8. The settlement adopted in D.02-12-041 is not modified or altered by this decision.

9. After August 31, 2011, BVES may recover in retail rates the reasonably incurred costs of the LACSD PPA for energy delivered to retail customers subject to prudent contract administration.

10. A non-interest bearing memorandum account reasonably offsets unrealized gains or losses created by the financial reporting impacts of SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities."

11. Application 10-06-003 should be closed.

O R D E R

IT IS ORDERED that:

1. The application is granted subject to the Ordering Paragraphs below.

2. Golden State Water Company's Bear Valley Electric Service Division (Bear Valley) shall establish a memorandum account to track unrealized gains and/or losses on the Power Purchase Agreement with Los Angeles County Sanitation District No. 2, in accordance with Statement of Financial Accounting Standards No. 133.

3. Nothing in this decision shall change or modify the provisions of Decision 02-07-041 or the settlement agreement approved thereby.

4. For energy delivered to retail customers, Bear Valley shall recover the actual costs of the Power Purchase Agreement, with Los Angeles County Sanitation District No. 2 incurred before August 31, 2011, subject to the existing settlement agreement adopted in Decision 02-10-041.

5. Bear Valley shall recover the actual costs of energy delivered to retail customers after August 31, 2011, pursuant to the Power Purchase Agreement with Los Angeles County Sanitation District No. 2, and subject to prudent contract administration.

6. Bear Valley shall establish a non-interest bearing memorandum account to record refunds or under-collections to offset the unrealized gains or losses of the Power Purchase Agreement with Los Angeles County Sanitation District No. 2, created by the financial reporting impacts of the Financial Account Standards Board's Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities."

7. Bear Valley must file for authority before subsequent energy contracts can be included in the balancing account.

8. Bear Valley shall file a Tier 2 advice letter, pursuant to General Order 96 B Section 5.3(2) proposing the specific language for the memorandum account with the Commission's Energy Division which will become effective upon approval as appropriate at the time.

9. No hearings are necessary.

10. Application 10-06-003 is closed.

This order is effective today.

Dated _____, at San Francisco, California.