



STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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3/3/2025

Agenda ID #23358
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 23-12-010:

This is the proposed decision of Administrative Law Judge Rafael L. Lirag. 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 24, 2025, 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 8.2(c)(4).

/s/ MICHELLE COOKE

Michelle Cooke

Chief Administrative Law Judge

MLC:asf

Attachment

Decision PROPOSED DECISION OF ALJ LIRAG (Mailed 3/3/2025)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Bear Valley Electric Service, Inc. (U 913 E), for Preapproval of Power Purchase Agreements and Benchmark Price Process; Authority to Recover Costs; and Authority to Establish Memorandum Account.

Application 23-12-010

DECISION GRANTING PREAPPROVAL OF POWER PURCHASE AGREEMENTS

Summary

Today’s decision grants preapproval of power purchase agreements (PPA) relating to an Energy Product that Bear Valley Electric Service, Inc. (Bear Valley) states will provide approximately 50 percent of its energy needs. Specifically, the decision grants preapproval of Master Agreements and unexecuted Confirmations with Exelon Generation Company, LLC, Morgan Stanley Capital Group, Inc. and Shell Energy North America (US) LP.

Bear Valley is also granted preapproval to determine a confidential benchmark price for an Energy Product. The process to determine the benchmark price is described in Bear Valley’s testimony.

In accordance with Decision 17-04-003, Bear Valley shall submit one executed winning Confirmation (including price) for the Energy Product (or Revised Energy Product) via advice letter.¹ Thereafter, Bear Valley is authorized to recover costs associated with the executed Confirmation.

Finally, Bear Valley is granted authority to establish a non-interest-bearing memorandum account that will track unrealized gains and/or losses regarding the executed Confirmation.

The decision finds that the proposed process in the Application complies with the procurement process established in D.17-04-003 and denying the Application causes more uncertainty for customers because Bear Valley's PPA agreement that covered its year-round energy needs has expired.

This proceeding is closed.

1. Background

On December 15, 2023, Bear Valley Electric Service, Inc. (Bear Valley) filed Application (A.) 23-12-010 for preapproval of the forms of certain power purchase agreements (PPA), preapproval of a benchmark price process for an energy product, authority to recover costs to an executed PPA, and establishment of a memorandum account to track unrealized gains and losses with respect to an executed PPA.

On January 22, 2024, a Protest to the Application was filed by the Public Advocates Office at the California Public Utilities Commission (Cal Advocates). Bear Valley filed a Reply on January 26, 2024.

On March 4, 2024, a prehearing conference (PHC) was held to gather information about the scope, schedule, and other procedural matters.

¹ If the Confirmation is above the applicable approved confidential benchmark price, Bear Valley shall file the executed Confirmation via a Tier 3 advice letter.

On April 26, 2024, the assigned Commissioner issued a Scoping Memorandum and Ruling (Scoping Memo) setting forth the scope and procedural schedule for the proceeding.

On April 30, 2024, the assigned Administrative Law Judge (ALJ) issued separate rulings cancelling evidentiary hearings² and directing parties to file a joint motion to admit testimony into the record.

On May 6, 2024, Bear Valley and Cal Advocates filed a Joint Motion to Admit Testimony into the Record. The Joint Motion was granted in the ALJ ruling on May 15, 2024, identifying and admitting exhibits in the Joint Motion into the record. The ruling also granted confidential treatment to exhibits deemed confidential.

On May 13, 2024, Bear Valley and Cal Advocates filed separate Opening Briefs. Separate Reply Briefs were filed by Bear Valley and Cal Advocates on May 28, 2024.

The record is deemed submitted on May 28, 2024, upon the filing of Reply Briefs.

2. Request

Bear Valley requests the preapproval of the forms of certain PPAs, preapproval of a benchmark price process for an energy product, authority to recover costs to an executed PPA, and establishment of a memorandum account to track unrealized gains and losses with respect to an executed PPA.

Bear Valley requested bids for a monthly-shaped, firm baseload energy product (Energy Product) to meet its energy needs for its customers. Bear Valley

² Evidentiary hearings were cancelled pursuant to a request from all parties in the proceeding.

also requested bids for a shorter-term energy product (Revised Energy Product) in an effort to obtain power at a lower cost.

Bear Valley seeks approval of Master Agreements³ from Exelon Generation Company, LLC (Constellation) and Morgan Stanley Capital Group, Inc. (Morgan Stanley), and Confirmations⁴ from Constellation, Morgan Stanley, and Shell Energy North America (US) LP (Shell Energy).

According to Bear Valley, the PPAs are consistent with Commission-approved Integrated Resource Plans (IRP)⁵ and are prudent and reasonable. The executed PPA will cover approximately 50 percent of Bear Valley's forecasted loads.

Bear Valley also requests preapproval of a benchmark price methodology for power contracts as described in Exhibit BVES-2.⁶

Finally, Bear Valley seeks authority to establish a non-interest bearing memorandum account to track unrealized gains and losses with respect to the executed PPA. Costs are expected to be recovered by Bear Valley once the PPA contract is executed.

3. Issues Before the Commission

As set forth in the assigned Commissioner's Scoping Memo⁷, the issues in this proceeding are as follows:

1. Whether the application is consistent with the requirements of Decision (D.) 17-04-003 and D.19-08-030;

³ A Master Agreement contains the terms and conditions of a PPA.

⁴ A confirmation is a specific document that details the final agreed-upon terms for a particular transaction based on the Master Agreement.

⁵ See Exhibit BVES-1 at 6.

⁶ See Exhibit BVES-2 at 6 to 15.

⁷ See Scoping Memo dated April 26, 2024 at 2.

2. Whether the terms and conditions of the Master Power Sales Agreements and associated collateral annexes of Constellation and Morgan Stanley should be approved;
3. Whether the terms and conditions (excluding prices) of the confirmations for Constellation, Morgan Stanley and Shell Energy should be pre-approved;
4. Whether the process to establish a benchmark price and recovery of costs for the Energy Product and Revised Energy Product should be preapproved;
5. Whether Bear Valley should be authorized to track unrealized gains and/or losses in a memorandum account; and
6. Whether the application is consistent with Bear Valley's 2020 and 2022 IRP.

4. Arguments raised by Cal Advocates

Other than the Applicant, Cal Advocates is the only other active party in this proceeding.

4.1. Cal Advocates

Cal Advocates states that Bear Valley failed to affirmatively establish the reasonableness of its requests. Cal Advocates argues that Bear Valley failed to provide the necessary analysis that demonstrates that its proposal is reasonable and more cost-effective than its past practices and that its hedging strategy is proportionate to the risks it seeks to mitigate.

One of the key issues in the proceeding is Bear Valley's proposed process to establish a benchmark price and recovery of costs for the Energy Product and Revised Energy Product. Cal Advocates states that Bear Valley failed to demonstrate that its proposed process would result in a reasonable benchmark and that any resulting PPA would produce favorable price stability and benefit ratepayers.

5. Discussion of Issues

5.1. Bear Valley's Procurement Process Consistent with D.17-04-003

Pursuant to California Public Utilities (Pub. Util.) Code Section 454.5, electric utilities are required to file a detailed, comprehensive procurement plan for Commission review and approval (long-term procurement plan). However, the same code section exempts small investor owned utilities such as Bear Valley with a customer base of less than 500,000 from filing a long-term procurement plan upon written request. Bear Valley filed such a request (Advice Letter 224-E filed on August 22, 2008) and in Resolution E-4232 issued on February 20, 2009, Bear Valley's request to be exempted from the long-term procurement plan process was granted.

In D.17-04-003, the Commission approved the following process which was meant to streamline Bear Valley's procurement process. This process was reiterated in D.19-08-030:

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 Integrated Resources Plan (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 General Order (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.⁸

Bear Valley included a copy of its 2020 IRP⁹ which was approved by the Commission in D.22-02-004.¹⁰ Bear Valley also included a copy of its 2022 IRP which was filed with the Commission on November 1, 2022.¹¹ The 2022 IRP remains pending as of the date of this decision, which makes the 2020 IRP Bear Valley's current IRP. The primary focus of both the 2020 and 2022 IRP is how Bear Valley plans to achieve renewables portfolio standards (RPS) and greenhouse gas emission reductions.

Based on our review, Bear Valley's proposed process in this Application follows and complies with the procedure authorized by the Commission in D.17-04-003 and reiterated in D.19-08-030.¹²

5.2. Preapproval of PPAs

The preapproval process developed in D.17-04-003 involves a two-phase bidding structure. The first phase determines a short list of qualified bidders and the second phase is to receive from one of the bidders a competitively priced bid that results in an executed confirmation. Prior to the second phase, Bear Valley must obtain from the Commission preapproval of the terms and conditions of the PPA which includes the Master Agreement and associated Confirmations from each short listed bidder but excluding terms relating to price.

⁸ D.17-04-003 Ordering Paragraph (OP) 3 at 28 to 29.

⁹ Appendix A of Application.

¹⁰ D.22-02-004 OP 2 at 191 to 192.

¹¹ Appendix B of Application.

¹² D.19-08-030 at 7.

Bear Valley sent a request for proposal in 2023 to around 150 potential bidders for its Energy Product. Based on the bids received, Constellation, Morgan Stanley, and Shell Energy were selected for inclusion in the short list of qualified bidders. Bear Valley evaluated the bids from these three companies and found them to be competitive and reflective of the market price for the Energy Product.

Exhibit BVES-2 contains the following Master Agreements and Confirmations:

- a) Constellation Master Agreement and Collateral Annex¹³
- b) Morgan Stanley Master Agreement and Collateral Annex¹⁴
- c) Constellation Confirmation¹⁵
- d) Morgan Stanley Confirmation¹⁶
- e) Shell Energy Confirmation¹⁷

Subsequent to the approval of the above Master Agreements and Confirmations, Bear Valley will execute only one Confirmation for either the Energy Product or Revised Energy Product. Bear Valley already has a preapproved Master Agreement with Shell Energy from Resolution E-5275.

We reviewed the Master Agreements and Confirmations and find it reasonable to grant preapproval of the terms and conditions stated therein (excluding terms and conditions relating to price). Subsequent to this

¹³ Exhibit BVES-2 Appendix A.

¹⁴ Exhibit BVES-2 Appendix B.

¹⁵ Exhibit BVES-2 Appendix C.

¹⁶ Exhibit BVES-2 Appendix D.

¹⁷ Exhibit BVES-2 Appendix E.

preapproval, Bear Valley is authorized to execute one of the Confirmations pursuant to the procurement process authorized in D.17-04-003.

From the testimony presented, Bear Valley can be described as a winter-peaking utility with greater energy needs during the winter months. It previously covered its energy needs via two PPAs. A larger PPA agreement with Morgan Stanley covered its year-round energy needs while a smaller seasonal PPA agreement with Constellation addressed additional energy needs during Bear Valley's peak energy months from November to February. The agreement with Morgan Stanley expired on October 31, 2024 and the PPA to be executed as a result of this application intends to replace that agreement which will supply Bear Valley with 50 percent of its year-round energy needs.

Based on our review, we find that the evidence presented supports Bear Valley's argument that the preapproval of the Master Agreements and Confirmations is consistent with the method approved in D.17-04-003. Cal Advocates does not object to the preapproval process of the PPAs or form of the contracts but does object to the Energy Product and Revised Energy Product. This issue is discussed in the next section of the decision.

5.3. Benchmark Price

Pursuant to the procedures set forth in D.17-04-003, Bear Valley must submit to the Commission a benchmark price for the proprietary product it seeks to purchase. In D.09-06-050, the Commission approved a procedure for approving RPS contracts using a price reasonableness benchmark. The Commission considered two basic approaches for establishing a reasonable benchmark price: (a) adaptation of the existing market price referent; or

(b) reliance on market prices for energy.¹⁸ The Commission added that relevant market information is the most important factor in determining price reasonableness.¹⁹ This method of determining price reasonableness was continued in both D.17-04-003 and D.19-08-030 although the Commission clarified that this method remains subject to a case by case review.

In this case, Bear Valley proposes that its method for arriving at a benchmark price reflect an accurate market price for the Energy Product or Revised Energy Product that Bear Valley seeks to purchase. The Energy Product is a long-term agreement for a period of 4 years and 2 months while the Revised Energy Product is for a slightly shorter period of 3 years and 2 months.²⁰

On the other hand, Cal advocates argues that Bear Valley failed to demonstrate that the variable energy product contracts it seeks to enter into reduces risks and produces favorable price stability for its ratepayers. Cal Advocates adds that Bear Valley only explored different bids for the Energy Product and Revised Energy Product but did not present alternative procurement strategies and that its hedging strategy may not be commensurate with the premium it is paying for that hedge. Bear Valley only considered price stability without properly balancing costs of hedging versus the risk being avoided. Cal Advocates recommends that Bear Valley's application be denied.

Regarding the determination of a benchmark price, we find that Bear Valley provided the necessary information in its testimony for the Commission to consider preapproval of the process for determining a benchmark price for the three confirmations included in the Application. We reviewed the process

¹⁸ Exhibit BVES-2 at 7.

¹⁹ D.09-06-050 at 15.

²⁰ Exhibit BVES-1 at 5.

described in Exhibit BVES-2 and find that the procedure complies with D.17-04-003. The process utilizes relevant market information in arriving at a reasonable benchmark price. In addition, the bids received from the short list of qualified bidders are relatively close in price, which supports Bear Valley's contention that the bids are competitive and that the process adopted will result in the development of a reasonable benchmark price.

Regarding Cal Advocates' opposition, Bear Valley states that both the Energy Product and Revised Energy Product are designed to address the risk of fluctuating energy prices and so both products are variable energy products instead of fixed energy amounts. According to Bear Valley, this will better address Bear Valley's energy needs which tend to vary from month to month and offer stability and potentially reduce the risk of having too much or too little energy during particular periods.

To a certain extent, we agree with Cal Advocates that Bear Valley presented limited comparison with other procurement options to show that the Energy Product is the best fit or the most cost effective. However, we find that Bear Valley's current energy needs outweighs these concerns and that rejecting the Application might cause harm to ratepayers. As stated earlier, Bear Valley's PPA agreement that covered its year-round energy needs has expired and the PPA to be executed will cover approximately 50 percent of its forecasted loads.

More importantly, the requested preapprovals and proposed process in the Application complies with the procurement process established in D.17-04-003. In addition, Cal Advocates' main concern regarding the Energy Product is the lack of alternatives and comparative analysis as opposed to identifying specific deficiencies in the proposed procurement process or terms and conditions of the proposed agreements.

Overall, we find it more reasonable to grant the preapprovals requested in this Application. Denying the Application causes more uncertainty for Bear Valley's customers. However, in its future PPA applications, Bear Valley should be cognizant of the concerns raised by Cal Advocates in this proceeding.

In accordance with D.17-04-003 and D.19-08-030, Bear Valley shall submit one executed winning Confirmation (including price) for either the Energy Product or Revised Energy Product using the advice letter process. The decision on whether to select the Energy Product or the Revised Energy Product will depend on the final bid price and whether opting for the Revised Energy Product produces significant savings. Thereafter, Bear Valley is authorized to recover costs associated with the executed Confirmation.

5.4. Memorandum Account Request

Bear Valley requests authority to establish a non-interest bearing memorandum account that will record and offset any unrealized gains or losses of the Energy Product (once the new PPA is entered into) resulting from the accounting requirements of Accounting Standards Codification (ASC) No. 815.

ASC No. 815 (Derivatives and Hedging) requires Bear Valley to record derivatives on its balance sheet as assets and liabilities, and to measure those instruments at their fair value throughout the term of a PPA. Bear Valley states that unrealized gains and losses from ASC No. 815 affect reported earnings of Bear Valley even though the fair value of the derivative becomes zero once the PPA expires and is fully settled. Unrealized gains and losses relating to derivatives from the new PPA will be tracked in the proposed memorandum account throughout the contract period of the PPA.

According to Bear Valley, the memorandum account will eliminate significant fluctuations and uncertainty to Bear Valley's reported earnings due to

derivative gains and losses which increase Bear Valley's risk profile from an investor's standpoint.

We reviewed Bear Valley's request regarding the above memorandum account and find it reasonable. The Commission has granted Bear Valley authority to establish similar memorandum accounts in the past²¹ and we find it reasonable to do so again. The memorandum account is expected to reduce Bear Valley's risk profile resulting in increased cost of capital and according to Bear Valley, the memorandum account will not impact Bear Valley's customers.²²

Cal Advocates does not oppose Bear Valley's request concerning establishment of the requested memorandum account.

6. Comments on Proposed Decision

The proposed decision in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

Comments were filed by _____ on _____. Reply comments were filed by _____ on _____.

7. Assignment of Proceeding

Commissioner John Reynolds is the assigned Commissioner and Rafael Lirag is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In D.17-04-003, the Commission approved a procedure that was meant to streamline Bear Valley's procurement process. This process was reiterated in D.19-08-030.

²¹ The Commission has granted Bear Valley authority to establish similar memorandum accounts in D.09-05-025, D.11-06-030, D.14-12-003, and D.19-08-030.

²² Exhibit BVES-1 at 10.

2. Bear Valley must obtain from the Commission preapproval of terms and conditions of the PPA to be executed, which includes the Master Agreement and associated Confirmations but excluding terms relating to price.

3. The evidence presented supports Bear Valley's argument that the preapproval of the Master Agreements and Confirmations is consistent with the method approved in D.17-04-003.

4. Subsequent to preapproval of the terms and conditions of the proposed Master Agreements and Confirmations, Bear Valley will execute one of the Confirmations pursuant to the procurement process authorized in D.17-04-003.

5. Pursuant to the procedures set forth in D.17-04-003, Bear Valley must submit to the Commission a benchmark price for the proprietary product it seeks to purchase.

6. The method of determining price reasonableness was continued in both D.17-04-003 and D.19-08-030 although the Commission clarified that this method remains subject to a case by case review.

7. Bear Valley provided the necessary information to consider preapproval of the process for determining a benchmark price.

8. The process presented by Bear Valley utilizes relevant market information in arriving at a reasonable benchmark price and the bids received are competitive.

9. Bear Valley's PPA agreement with Morgan Stanley that covered its year-round energy needs has expired and the PPA to be executed will cover approximately 50 percent of its forecasted loads.

10. Cal Advocates' main concern regarding the Energy Product is the lack of alternatives and comparative analysis as opposed to identifying specific

deficiencies in the proposed procurement process or the terms and conditions of the proposed agreements.

11. ASC No. 815 requires Bear Valley to record derivatives on its balance sheet and to measure those instruments at their fair value throughout the term of a PPA.

12. The unrealized gains and losses affect reported earnings even though the fair value of the derivative becomes zero once the PPA expires and is fully settled.

13. The memorandum account will eliminate significant fluctuations and uncertainty to Bear Valley's reported earnings due to derivative gains and losses and will not impact its customers.

14. The Commission has granted Bear Valley authority to establish similar memorandum accounts in the past.

Conclusions of Law

1. Bear Valley's proposed procurement process follows and complies with the procedure authorized by the Commission in D.17-04-003 and reiterated in D.19-08-030.

2. It is reasonable to grant preapproval of the terms and conditions stated in the proposed Master Agreements and Confirmations excluding terms and conditions relating to price.

3. The process presented by Bear Valley results in the development of a reasonable benchmark price.

4. The proposed process in the Application complies with the procurement process established in D.17-04-003 and it is more reasonable to grant the requests in the Application.

5. In accordance with D.17-04-003 and D.19-08-030, Bear Valley should be directed to submit one executed winning Confirmation (including price) for either the Energy Product or Revised Energy Product using the advice letter process.

6. Bear Valley should be authorized to recover costs associated with the executed Confirmation.

7. Bear Valley's request to establish a non-interest bearing memorandum account that will record and offset any unrealized gains or losses relating to derivatives from the new PPA is reasonable and should be approved.

O R D E R

IT IS ORDERED that:

1. Bear Valley Electric Service, Inc. is granted preapproval of the following Master Agreements including Collateral Annexes, and preapproval of the following unexecuted Confirmations:

- a) Exelon Generation Company, LLC (Constellation) Master Agreement and Collateral Annex;
- b) Morgan Stanley Capital Group, Inc. (Morgan Stanley) Master Agreement and Collateral Annex;
- c) Constellation Confirmation;
- d) Morgan Stanley Confirmation; and
- e) Shell Energy North America (US) LP Confirmation

2. Bear Valley Electric Service, Inc. is granted preapproval to determine a confidential benchmark price for the Energy Product and Revised Energy Product.

3. In accordance with Decision 17-04-003, Bear Valley Electric Service, Inc. (Bear Valley) shall submit one executed winning Confirmation (including price) for either the Energy Product or Revised Energy Product using the advice letter

process. If the Confirmation is at or below the applicable approved confidential benchmark price, Bear Valley shall submit the Confirmation via a Tier 1 advice letter. If the Confirmation is above the applicable approved confidential benchmark price, Bear Valley shall file the executed Confirmation via a Tier 3 advice letter.

4. Bear Valley Electric Service, Inc. is granted authority to recover costs associated with the executed Confirmation for either the Energy Product or Revised Energy Product.

5. Bear Valley Electric Service, Inc. is authorized to establish a non-interest-bearing memorandum account to track unrealized gains and/or losses regarding the executed Confirmation for either the Energy Product or Revised Energy Product.

6. Application 23-12-010 is closed.

This order is effective today.

Dated _____, at Sacramento, California.