



FILED

06/28/24

04:59 PM

A2405020

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 a Certificate of Public Convenience and Necessity to Acquire, Own, and Operate the Bear Valley Solar Energy and Battery Storage Projects and Authorize Ratemaking Associated with the Projects' Capital Investment and Operating Expenses.

Application 24-05-020

PROTEST OF THE PUBLIC ADVOCATES OFFICE

CHRISTOPHER MYERS

Analyst

Public Advocates Office
California Public Utilities Commission
505 Van Ness Avenue, 4th Floor
San Francisco, CA 94102
Telephone. (415) 703-2908
Email: Christopher.Myers@cpuc.ca.gov

MATT MILEY

Attorney for

Public Advocates Office
California Public Utilities Commission
505 Van Ness Avenue, 5th Floor
San Francisco, CA 94012
Telephone: (415) 703-3066
Email: Matt.Miley@cpuc.ca.gov

June 28, 2024

534833620

I. INTRODUCTION

Pursuant to Rule 2.6 of the California Public Utilities Commission’s (Commission) Rules of Practice and Procedure (Rules), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits this protest to the *Application of Bear Valley Electric Service, Inc. (U 913 E) for a Certificate of Public Convenience and Necessity to Acquire, Own, and Operate the Bear Valley Solar Energy and Battery Storage Projects and Authorize Ratemaking Associated with the Projects’ Capital Investment and Operating Expenses* (Application) filed on May 17, 2024.

In its Application and supporting testimony, Bear Valley Electric Service, Inc. (BVES) requests that the Commission issue a Certificate of Public Convenience and Necessity (CPCN)¹ to acquire, own, and operate: (1) the Bear Valley Solar Project (Solar Project)² and (2) the Bear Valley Energy Storage System (Battery Project).³ BVES also asks the Commission to approve “each Projects’ engineering, procurement, and construction (“EPC”) agreement and grant the proposed ratemaking procedures for BVES to recover the costs to acquire, own, and operate the Projects.”⁴ Pursuant to Rule 2.1, BVES seeks Commission authorization of its Application solely under Public Utilities Code Section 399.14.⁵

Cal Advocates is reviewing the Application and supporting testimony, and it will begin discovery in the near future. However, for the reasons explained below, Cal Advocates recommends that the Commission’s scoping memo restrict the authority under which the Commission will review the Application to Section 399.14⁶ because that is the

¹ Application at 1.

² Application at 8. BVES states that the Solar Project is a 5 Megawatt (MW) Alternating Current (AC) / 6.10 MW Direct Current (DC) solar photovoltaic (PV) project.

³ Application at 11. BVES states that the Battery Project is a 5 MW / 20 Megawatt-hour (MWh) consisting of six Tesla Megapack XL Lithium-ion (“Megapack”) units (or equivalent technologies) designed to support a range of AC power and energy.

⁴ Application at 1-2, internal citation omitted.

⁵ Application at 38 [“Pursuant to Rule 2.1, BVES files this Application pursuant to Section 399.14.”].

⁶ All statutory references hereafter are to the Public Utilities Code, unless otherwise specified.

sole authority BVES cites in its Rule 2.1 statement. Cal Advocates further requests that the scope of the proceeding include whether the Solar Project and Battery Project satisfy all the requirements set forth in Section 399.14.

II. DISCUSSION

A. The Commission should limit review of the Application to a Section 399.14 inquiry.

BVES's Rule 2.1 statement identifies Section 399.14 as the sole authority for the relief sought in the Application.⁷ However, throughout the Application BVES also references numerous other authorities as a basis for the relief requested in the Application.⁸ The Commission should restrict the authority under which it will review the Application to Section 399.14. BVES explicitly states that “[p]ursuant to Rule 2.1, BVES files this Application pursuant to [Public Utilities Code] Section 399.14.”⁹ Commission Rule 2.1 states, in part, that, “[a]ll applications . . . shall cite by appropriate reference the statutory provision or other authority under which Commission authorization or relief is sought”¹⁰ The requirement that the applicant cite the authority under which it is seeking Commission authorization serves a vital function because it, acting in concert with the proceeding's scoping memo,¹¹ establishes the elements that the applicant must satisfy to meet its burden of proof.¹² It provides notice to intervening parties of the exact authority under which they should review the

⁷ Application at 38 [“Pursuant to Rule 2.1, BVES files this Application pursuant to Section 399.14.”].

⁸ See Application at 1-3, and 20-21.

⁹ Application at 38.

¹⁰ See Rule 2.1.

¹¹ Rule 7.3.

¹² See Decision (D.) 08-12-058, *Decision Granting a Certificate of Public Convenience and Necessity for the Sunrise Powerlink Transmission Project*, December 18, 2008 at 17, quoting D.06-05-016, *Opinion on Southern California Edison Company's Test Year 2006 General Rate Increase Request*, May 11, 2006 at 7:

[The utility] has the burden of affirmatively establishing the reasonableness of all aspects of its application. Intervenors do not have the burden of proving the unreasonableness of [the utility's] showing.

Application. BVES chooses to satisfy its Rule 2.1 requirement by citing only Section 399.14.

In the Application’s introduction, BVES states that it requests Commission authorization of its Solar Project “pursuant to Senate Bill (“SB”) 350, SB 100, SB 1339, Assembly Bill (“AB”) 32, AB 2514, Sections 380 and 1001, and . . . Section 399.14[.]”¹³ AB 32, SB 350, and SB 100 are broad and complex pieces of legislation that made sweeping changes to the state’s energy and climate policies. It is not clear what authority BVES is claiming these pieces of legislation provide regarding the projects at issue in the Application or how these pieces of legislation are related to BVES’s request that the Commission approve the projects presented in its Application. The Application’s overly vague references to these massive pieces of legislation deprives the Commission and Cal Advocates of a reasonable understanding about the authorities upon which BVES relies. Additionally, it is unclear why BVES asserts authorization pursuant to AB 2514 for its Solar Project, because AB 2514 is an energy-storage specific piece of legislation, which explicitly exempts BVES.¹⁴ If BVES is claiming that the Battery Project should be examined under one of the other overarching bills it provides, BVES should clarify which bill specifically supports authorization of the Battery Project. Regardless, to the extent that BVES wanted to assert these additional authorities for the purposes of its Rule 2.1 requirement, it was obligated to specifically make those assertions and more precisely inform the Commission and parties of the exact authorities within those broad pieces of legislation that it relies upon. BVES did not do so.

¹³ Application at 1.

¹⁴ See Section 2838.5, in part:

Notwithstanding any provision of this chapter, the requirements of this chapter do not apply to either of the following:
(a) An electrical corporation that has 60,000 or fewer customer accounts within California.

With respect to the Battery Project, the sole authority BVES asserts is Section 399.14 in its Rule 2.1 statement.¹⁵ However, BVES argues that, if the Commission does not authorize the Battery Project a CPCN under Section 399.14 then

the Commission, alternatively, can and should grant BVES the requested CPCN for the Battery Project under Section 1001 *et seq.* or find the Battery Project exempt from the requirement of a CPCN.¹⁶

The Commission should reject BVES's approach. Rule 2.1 requires BVES, as the applicant, to inform the Commission and parties of the authority under which authorization is sought.¹⁷ It is unreasonable and harmful to intervening parties' due process rights to allow BVES to present a nesting doll of options if it fails to meet its burden of proof under the specific authority it asserts in its Rule 2.1 statement (i.e.: Section 399.14).

B. The scope of the proceeding should focus on whether the Solar Project and the Battery Project satisfy all the elements of Section 399.14.

Because BVES identifies Section 399.14 as the sole authority in its Rule 2.1 statement, the scope of the proceeding should consider whether the Solar Project and the Battery Project satisfy all the elements of Section 399.14. Section 399.14 sets forth a four-part test to determine whether an application merits Commission approval. As a threshold matter, the first part of the test looks at whether the applicant is presenting an eligible renewable energy resource for approval.

Public Resources Code Section 25741 defines "Renewable electrical generating facility" and further establishes the requirements that those facilities must satisfy. Thereafter, the examination turns to the California Energy Commission's (CEC) RPS

¹⁵ Application at 1 and 39.

¹⁶ Application at 21.

¹⁷ Rule 2.1:

All applications shall state clearly and concisely the authorization or relief sought; shall cite by appropriate reference the statutory provision or other authority under which Commission authorization or relief is sought

Eligibility Guidebook (RPS Guidebook). The RPS Guidebook, in part, “describes the requirements and process for certifying facilities as RPS-eligible and describes how the [CEC] will track and verify compliance with the RPS.”¹⁸ For the Solar Project, the RPS Guidebook states that BVES must show, among other things, that the project “generates electricity using either a photovoltaic or solar thermal process to produce electricity.”¹⁹ For the Battery Project, BVES must show, among other things, that the energy storage facility is either: (1) integrated into a qualified eligible renewable energy resource; or (2) directly connected to a qualified eligible renewable energy resource.²⁰ This is because energy storage technologies “are not inherently renewable as they are not dependent on the use of a renewable energy resource.”²¹ The RPS Guidebook makes clear that, if the energy storage facility does not meet one of the two classifications referenced above, the storage facility is not eligible for RPS certification.²²

While Cal Advocates is still reviewing the Application and supporting testimony, a preliminary review indicates that the Battery Project may not satisfy the requirements established in the RPS Guidebook. The Solar Project and the Battery Project are located at two separate sites with significant distance between the two Projects,²³ which indicates the proposed Battery Project is not integrated into or directly connected to the proposed Solar Project. BVES does not present information in its Application that suggests the Battery Project is located in the vicinity of another eligible renewable energy resource. Instead, the Battery Project is located adjacent to the Bear Valley Power Plant, which is “a natural gas-fired 8.4 MW generation plant.”²⁴ Thus, it is unclear how the Battery

¹⁸ The California Energy Commission, Commission Guidebook, Renewables Portfolio Standard Eligibility, Ninth Edition (Revised) at 1, January 2017 (CEC Guidebook RPS Eligibility). Available at: <https://efiling.energy.ca.gov/getdocument.aspx?tn=217317>.

¹⁹ CEC Guidebook RPS Eligibility at 21.

²⁰ CEC Guidebook RPS Eligibility at 40.

²¹ CEC Guidebook RPS Eligibility at 40.

²² CEC Guidebook RPS Eligibility at 41.

²³ Application at 9 and 12.

²⁴ Application at 5 and 12.

Project can meet one of the two classifications referenced above to satisfy the RPS Guidebook requirements and thus qualify under Section 399.14.

III. ISSUES TO BE CONSIDERED

Cal Advocates does not object to BVES's scope of issues to be considered as outlined in the Application's statement of requested reliefs, with one exception.²⁵ In its statement of requested reliefs, BVES asks the Commission to "[a]pprove the Reasonable Cost for the Battery Project pursuant to Sections 399.14 and/or 1001 *et seq.*, plus an AFUDC."²⁶ As discussed in Section II.A above, BVES makes clear in its Rule 2.1 statement that it is requesting Commission approval of its Application under Section 399.14.

It is unreasonable to allow BVES to argue different theories for its requested reliefs and require intervening parties to expend time and resources reviewing the Application under the authority which BVES asserts, only to pivot to another authority should BVES fail meet is burden. This is especially true here because BVES also argues that the Battery Project should be exempt from Section 1001 *et seq.* review pursuant to the Commission's General Order 131-D.²⁷ Confusingly, BVES then argues that if the Battery Project cannot satisfy GO 131-D standards, then it should be reviewed under Section 1001 *et seq.*²⁸ even though BVES argues that the Battery Project should be exempt from Section 1001 *et seq.*²⁹ BVES's Rule 2.1 statement invokes Section 399.14

²⁵ Application at 44-45.

²⁶ Application at 44.

²⁷ Application at 36-37, internal citations omitted. BVES states:

Pursuant to Section 1001 *et seq.*, General Order ("GO") 131-D sets forth the Commission's rules relating to the construction of electric generation, transmission, and distribution lines, including the issuance of appropriate CPCNs. General Order 131-D, Section III provides that projects in excess of 50 MW are required to obtain a CPCN. Thus, the Commission has exempted projects from the requirement of obtaining a CPCN that do not exceed the 50 MW threshold. The Battery Project, as a 5 MW facility, should similarly be exempt from the requirement to obtain a CPCN, under Commission General Order 131-D.

²⁸ Application at 36-37.

²⁹ Application at 36-37.

as the sole authority for approval of its Application. Accordingly, the Commission's scoping memo should restrict the authority under which the Commission will review the Application to Section 399.14. Alternatively, the Commission's scoping memo should clearly identify the authority or standard under which the Application will be reviewed.

Cal Advocates also recommends that the scope of the proceeding be expanded to address additional issues. Though BVES asks the Commission to approve its Solar Project and Battery Project pursuant to Section 399.14, its statement of requested reliefs limits that to approval of the "Reasonable Costs."³⁰ However, the Commission only reaches the reasonable costs element of Section 399.14 after it subjects the Application to the four-part statutory test. Therefore, Cal Advocates recommends that the Commission include the following issues in the scope of the proceeding:

- Does the Solar Project satisfy all the requirements set forth in Section 399.14?
- Does the Battery Project satisfy all the requirements set forth in Section 399.14?

Cal Advocates is still reviewing the Application and supporting testimony and will raise any additional issues discovered in the review process at the earliest opportunity.

IV. CATEGORIZATION

Cal Advocates agrees with BVES's proposal³¹ that this proceeding should be categorized as ratesetting.

V. NEED FOR HEARINGS

Cal Advocates is in the initial stages of its review of the Application and supporting testimony, and will begin discovery in the near future. It is not clear at this point whether evidentiary hearings will be needed. Cal Advocates recommends that the Commission include in this proceeding's schedule the opportunity to file a motion requesting evidentiary hearings. Scheduling a deadline to file a motion requesting evidentiary hearings will allow parties the opportunity to conduct thorough analyses,

³⁰ Application at 44.

³¹ Application at 39.

meet and confer, serve testimony, and identify material issues of factual dispute that may necessitate evidentiary hearings. Thus, Cal Advocates proposes that the Commission consider the need for evidentiary hearings later.

VI. PROCEDURAL SCHEDULE

Cal Advocates proposes the following procedural schedule for this Application:

CAL ADVOCATES' PROPOSED SCHEDULE

EVENT	BVES PROPOSED SCHEDULE	PROPOSED SCHEDULE
Application noticed on daily calendar	May 17, 2024	May 17, 2024
Protest	June 21, 2024	June 28, 2024
Response to Protest	July 1, 2024	July 8, 2024
Prehearing Conference	July 7, 2024	July/August 2024
Scoping Memo	July 29, 2024	August/September 2024
Intervenor Testimony	N/A	Six weeks after the Scoping Memo is issued.
Rebuttal Testimony	N/A	Three weeks after Intervenor Testimony is served
Motion for Evidentiary Hearings	N/A	Three weeks after Rebuttal Testimony is served
Evidentiary Hearings (if necessary)	N/A	TBD
Opening Briefs	N/A	Four weeks after Rebuttal Testimony is served or evidentiary hearings are held.
Reply Briefs	N/A	Three weeks after opening briefs.
Proposed Decision	November 2024	TBD
Final Decision	December 2024	TBD

VII. CONCLUSION

Cal Advocates respectfully requests that the Commission adopt the recommendations herein. Cal Advocates is reviewing the Application and supporting testimony and will raise any additional issues discovered in the review process at the earliest opportunity.

Respectfully submitted,

/s/ MATT MILEY
Matt Miley
Attorney for the

Public Advocates Office
California Public Utilities Commission
505 Van Ness Avenue, 5th Floor
San Francisco, CA 94102
Tel: (415) 703-3066
Email: Matt.Miley@cpuc.ca.gov

June 28, 2024