

BEFORE THE  
PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF CALIFORNIA



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Order Instituting Rulemaking to Oversee the  
Resource Adequacy Program, Consider  
Program Refinements, and Establish Annual  
Local and Flexible Procurement Obligations  
for the 2019 and 2020 Compliance Years

R.17-09-020

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**PETITION OF SHELL ENERGY NORTH AMERICA  
(US), L.P. FOR MODIFICATION OF D.19-02-022**

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In accordance with Rule 16.4 of the Commission’s Rules, Shell Energy North America (US), L.P. (“Shell Energy”) submits this petition for modification of the Commission’s February 21, 2019 decision (D.19-02-022) addressing “Track 2” issues in the above-referenced proceeding.<sup>1</sup> For the reasons set forth below, Shell Energy requests that the Commission modify D.19-02-022 in two respects: First, the Commission should defer implementation of the adopted three-year forward local resource adequacy (“RA”) procurement obligation until the later of the 2021 RA compliance year or when the Commission implements comprehensive rules regarding a “central procurement entity” (including a pricing mechanism) for local RA procurement. Second, the Commission should modify the adopted annual Energy Division RA resource report

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<sup>1</sup> D.19-02-022 was issued on March 4, 2019.

to provide load-serving entities' ("LSE") aggregate RA resources, not LSE-specific resources.<sup>2</sup>

In support of its petition for modification, Shell Energy states the following:

## **I.**

### **INTRODUCTION**

In its Track 1 decision in this proceeding (D.18-06-030 (June 21, 2018)), the Commission directed parties to address, in Track 2, both a multi-year local RA procurement requirement and a central procurement entity structure. The Commission stated: "[T]he Commission believes that there is value to having a multi-year local RA requirement to ensure that resources needed for reliability are procured in an orderly fashion, and intends to implement a multi-year local RA requirement in Track 2 of this proceeding." Decision at p. 28. The Commission also stated: "[W]e believe that a central buyer system -- for at least some portion of local RA -- is the solution most likely to provide cost efficiency, market certainty, reliability, administrative efficiency, and customer protection." Decision at p. 32. The Commission directed parties to address, in Track 2, a multi-year forward local RA procurement obligation and a central procurement structure for multi-year local RA procurement. *Id.* at p. 54, Ordering Paragraph Nos. 10 and 11.

In Track 2 of this proceeding, the Commission considered the parameters of a multi-year forward local RA procurement obligation and the role of a central procurement entity in the purchase of local RA capacity. The Commission's adopted Track 2 Decision (D.19-02-022), however, resolved only one of these two interrelated issues. The Track 2 Decision adopted a minimum three-year forward local RA procurement obligation for all LSEs, beginning with the 2020 RA compliance year. Decision at p. 22. The Decision deferred, however, to a "workshop" process, consideration of whether, and if so when, a "central procurement entity" will be

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<sup>2</sup> Specific wording to carry out the requested modifications is set forth in an Appendix.

responsible for all or some portion of LSEs' local RA capacity procurement obligation. Id. at p. 17-19.

The Commission's Track 2 decision improperly failed to address the interconnection between a multi-year forward procurement obligation and a central procurement entity. The Track 2 Decision also failed to recognize that a market structure and/or a pricing mechanism must be adopted to alleviate the additional ratepayer price risk when an LSE must procure local RA capacity three years forward. Because the Commission deferred its decision on a central procurement structure and did not indicate how centralized procurement will be conducted (e.g., through an auction or other pricing mechanism), the Commission's determination to implement a three-year forward local RA procurement obligation for all LSEs for the 2020 RA compliance year is premature. The Track 2 Decision imposes tremendous risks and costs on LSEs and ratepayers alike.

The Decision Track 2 also adopted new "transparency" provisions that are intended to provide the public with more information on the specific resources procured by LSEs to meet their prior year's RA obligations. The Decision requires the Energy Division, early in each calendar year, to post a summary list of the resources listed on each LSE's monthly RA plans for the previous year. Decision at p. 36. The Decision orders the Energy Division to post the "scheduling resource ID, scheduling coordinator ID or counterparty, zonal location, and local area (if applicable)." Id. Contrary to the confidentiality protections of D.06-06-066 (June 29, 2006), the annual Energy Division report has the effect of revealing LSEs' procurement strategies for the immediate prior year, including insight into the construction of each LSE's competitive RA capacity portfolio.

The Commission's Track 2 decision should be modified. In order to avoid (or at least

mitigate) the incurrence of stranded costs (with consequent cost increases for ratepayers), the Commission's determination to impose a three-year forward local RA procurement obligation on all LSEs should be deferred. The timing of implementation of the three-year forward local RA procurement obligation must coincide with the timing of implementation of the Commission's determination regarding the role (if any) of a central procurement entity in local RA procurement. In this regard, the role of a central procurement entity may be determined through pending legislation.<sup>3</sup> Implementation of the three-year forward local RA procurement obligation should be deferred to the later of the 2021 RA compliance year or when the Commission implements a structure (and rules) for an adopted central procurement entity, if any.

Furthermore, the new Energy Division report for LSEs' previous year's RA resources should be modified to protect the confidentiality of the identity of individual LSEs' previous year's RA resources and counterparties. The Commission should modify D.19-02-022 to direct the Energy Division to present an annual RA resource report with aggregated information on all LSEs' RA resources, rather than LSE-specific resource information. In addition, LSE "counterparty" information should not be included in the Energy Division report.

## **II.**

### **IMPLEMENTATION OF A THREE-YEAR FORWARD LOCAL RA PROCUREMENT OBLIGATION SHOULD BE DEFERRED UNTIL THE ROLE OF A CENTRAL PROCUREMENT ENTITY IS RESOLVED**

In D.19-02-022, the Commission addressed only one of the two interrelated Track 2 policy issues that the Commission considered in its Track 1 decision. The Commission forged ahead with implementation of a multi-year forward local RA procurement obligation for all LSEs, without considering how the role of a central procurement entity may impact an LSE's three-year forward local RA procurement obligation. In D.19-02-022, the Commission stated:

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<sup>3</sup> See AB 56 (Garcia).

“While we are not adopting a central procurement structure in this decision, we consider adoption of a multi-year local RA program since the foundation for a multi-year local RA framework was set forth in the Track 1 decision.” Decision at p. 20.

If a three-year forward local RA procurement obligation is implemented for the 2020 RA compliance year, without first deciding the role of a central procurement entity, unnecessary incremental costs will be borne by ratepayers and an additional financial burden will be imposed on LSEs. The Track 2 Decision requires each LSE to procure 100 percent of its local RA procurement requirement for the first and second years of the three-year forward procurement period, and 50 percent of its requirement for the third year. Decision at p. 27.<sup>4</sup> The Decision provides that each LSE must meet this three-year forward local RA procurement obligation by October 31, 2019, the year-ahead RA compliance deadline for 2020. *Id.* at p. 29.

The Track 2 Decision requires that LSEs satisfy this three-year forward procurement requirement notwithstanding uncertainty about whether a central procurement entity will be responsible for all or some portion of the local RA capacity procurement obligation for the three-year ahead period, as well as uncertainty about when a central procurement entity’s local RA procurement responsibility will begin. The Commission’s decision to impose a three-year forward local RA procurement obligation on all LSEs beginning in 2020 is missing an essential predicate.

**A. Implementing a Three-Year Forward Local RA Obligation for All LSEs Without Knowing the Role of a Central Procurement Entity Will Result in Stranded Costs**

Implementing a multi-year local RA obligation without a central procurement structure in

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<sup>4</sup> The Track 2 decision orders LSEs to incur an additional \$1.8 billion in local capacity costs (beyond one year forward) with no defined mechanism for cost recovery and potential significant devaluation, depending on the role of a central procurement entity. This calculation assumes that LSEs must purchase 25,000 MW of local RA at a cost of \$4/kw-mo. This \$1.8 billion cost calculation reflects the 100 percent local RA capacity cost for the second year forward and 50 percent in the third year forward.

place is likely to lead to uneconomic decisions that are costly to ratepayers. How a central procurement entity is structured, how price transparency in local areas is established (through an electronic bulletin board (“EBB”), or a centralized capacity market, or an auction), how to deal with load migration, and what entity acts as the central procurement entity, are all critical issues that go hand in hand with a multi-year forward local RA procurement obligation. The Commission understood the interrelationship of these issues when it linked the central procurement entity and a multi-year forward procurement obligation in D.18-06-030. In its Track 2 Decision, however, the Commission failed to recognize the connection between these issues. The parameters of all LSEs’ multi-year forward procurement obligations depend on the role, if any, of a central procurement entity. One element cannot be implemented without the other.

Because the role of a central procurement entity in local RA procurement has not been established, the Track 2 Decision should be modified to delay implementation of the three-year forward local RA procurement obligation until the Commission implements rules regarding a central procurement entity. The Commission should adopt this modification as a practical change to avoid duplicative local capacity procurement by LSEs, and to prevent the incurrence of stranded costs by ratepayers. In D.18-06-030, the Commission determined that it would address both the central procurement entity and the multi-year forward local RA procurement obligation in Track 2. See D.18-06-030 at pp. 28, 32-33. An LSE should not be required to engage in three-year forward local RA procurement until the Commission has determined whether, when, and to what extent local RA capacity procurement will be the responsibility of a central procurement entity.

**B. The Timing of the “Workshop” Process for a Central Procurement Entity Prevents LSEs From Knowing the Role of a Central Procurement Entity Before LSEs Must**

### **Enter Into Three-Year Forward Local RA Commitments**

The Track 2 Decision states that the Commission will address the central procurement entity issue through a series of workshops beginning in April 2019, with a final Decision expected in the fourth quarter of this year. See Decision at pp. 18-19. The timetable set forth in the Track 2 Decision means that LSEs must, by October 31, 2019, procure local RA capacity for their forecast load three years forward, without knowing whether the Commission will undermine (and devalue) their procurement contracts by establishing a central procurement entity for all or some portion of LSEs' local RA capacity obligations in compliance years 2021 and 2022.<sup>5</sup>

Furthermore, the Commission's Track 2 Decision raises the question whether all the elements of the adopted three-year forward local RA procurement obligation will endure. The Decision states: "While the Commission adopts LSE-based multi-year local requirements at this time, the Commission intends to revisit the LSE-based component of multi-year local procurement in a decision to be issued in the fourth quarter of 2019." Decision at p. 29. This statement in the Track 2 Decision compounds LSEs' uncertainty regarding the terms and conditions of their local RA procurement obligation over the three-year period. This increased uncertainty will translate to increased costs for ratepayers.

Under any conditions, a three-year forward local RA procurement obligation is fraught with risk for an LSE with an uncertain load forecast beyond one year ahead. This risk is amplified, however, when an LSE does not know what role a central procurement entity will play in local RA procurement. The uncertainty regarding the scope of a central procurement entity's procurement obligation increases the potential for an LSE to incur "stranded" local RA

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<sup>5</sup> LSEs that are forced to re-sell "excess" local RA capacity owing to the adoption of a central procurement structure likely will be unable to recover the full amount of their procurement costs.



procurement costs. All customers -- and the Commission -- should be concerned about the excess local RA procurement costs that may result from the Commission's decision.

Moreover, the potential for stranded local RA procurement costs places ESPs and CCAs at a disadvantage compared to the IOUs from the outset of this new three-year forward local RA procurement program. The IOUs can confidently purchase local RA capacity at any time, knowing that the cost will be recovered from their customers. By contrast, ESPs do not enjoy guaranteed cost recovery. ESPs seeking to avoid stranded costs will procure their local RA capacity when they have greater certainty of their year-ahead load forecast, ahead of the deadline for the year-ahead RA compliance report. In addition to the uncertainty regarding the role of a central procurement entity, therefore, an ESP will be disadvantaged when it engages in three-year forward procurement after the IOUs have been able to secure local RA capacity. ESPs cannot be certain that the IOUs will sell their excess local RA capacity to ESPs and other non-IOU LSEs.

In light of the Commission's deferral of a decision on a central procurement entity until late this year, the Commission's adopted three-year forward local RA procurement obligation (beginning in the 2020 compliance year) is premature. There is no immediate need for a multi-year forward local RA procurement obligation, as there is sufficient capacity available to meet local reliability requirements in the next three years. The Commission should modify D.19-02-022 to defer implementation of the adopted minimum three-year forward local RA procurement obligation until the later of the 2021 RA compliance year or when the Commission implements rules regarding a central procurement entity for local RA procurement (including after the legislature takes action on whether, and if so how a central procurement entity will function). This modification of D.19-02-022 will prevent ratepayers from incurring unnecessary costs.

### III.

#### **THE DECISION SHOULD BE MODIFIED TO REQUIRE THE ENERGY DIVISION TO REPORT LSEs' RESOURCE INFORMATION ON AN AGGREGATED BASIS**

The Decision also adopts a new annual Energy Division reporting obligation that conflicts with the confidentiality rules established in D.06-06-066. The Decision requires the Energy Division, early in each calendar year, to post a summary of the resources listed on each LSE's monthly RA plans for the previous year. Decision at p. 36. The Decision orders the Energy Division to post the "scheduling resource ID, scheduling coordinator ID or counterparty, zonal location, and local area (if applicable)." Id.

Citing comments by PG&E, the Commission suggests that this annual posting requirement will "protect market sensitive information such as an LSE's load share and open position." See Decision at p. 36. The Commission finds that disclosing "all resources used to satisfy an LSE's RA obligation in the previous year, without disclosing the number of megawatts associated with the resource, is a reasonable first step towards promoting transparency." Decision at p. 43, Finding of Fact No. 15.

Contrary to the Commission's finding, the Energy Division's disclosure of an LSE's previous year's capacity resource information will compromise the LSE's competitive position in the market. Disclosure of an LSE's RA resources, as well as an LSE's counterparties, will reveal an LSE's unique resource strategy, procurement approach, and portfolio balance, all of which are a part of an LSE's proprietary procurement offering. This information constitutes a "trade secret" and is confidential; an LSE's previous year's information is protected from disclosure under D.06-06-066 and D.08-04-023 (April 10, 2008).

The Decision should be modified to require the Energy Division to provide specified LSE resource information (scheduling resource ID, zonal location, and local area) in an aggregated

format, rather than on an LSE-specific basis. The Energy Division report should include aggregate resources by MW and by zone. Providing this information on an aggregate basis protects individual LSEs' prior year's RA resource information from disclosure while providing a list of the resources being used by all LSEs to satisfy their RA procurement obligations. The identity of LSE-specific counterparties is unnecessary as it provides no useful information. A counterparty is not necessarily the operator or the owner of the generation facility.

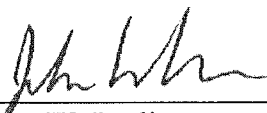
The proposed aggregation of LSEs' resources is similar to the approach adopted in D.18-10-019 (October 11, 2018) for the Energy Division's collection and presentation of ESP and CCAs' annual RA (and RPS) price information for the market price benchmark in the PCIA. See D.18-10-019 at pp. 73-75. The Commission should protect the confidentiality of individual LSEs' RA procurement decisions by directing the Energy Division to report LSEs' RA resources on an aggregated basis.

#### **IV.**

#### **CONCLUSION**

The Commission should modify D.19-02-022 in two respects. First, the Commission should defer implementation of the adopted minimum three-year forward local RA procurement obligation for all LSEs until the later of the 2021 RA compliance year or when the Commission implements comprehensive rules regarding a central procurement entity for local RA procurement. Second, the Commission should modify the Energy Division's annual report of LSEs' contracted RA capacity to require the Energy Division to provide aggregate LSE RA resources, not individual LSE-specific resources.

Respectfully submitted,



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## APPENDIX

### SPECIFIC WORDING TO CARRY OUT ALL REQUESTED MODIFICATIONS TO THE DECISION (RULE 16.4(b))

#### A. Revised Findings of Fact (“FOF”):

Revise FOF No. 4 as follows:

4. It is not reasonable to implement a multi-year local RA framework before resolving the central buyer structure. Implementation of a multi-year local RA framework should be coincident with implementation of a central buyer structure.

Revise FOF No. 9 as follows:

9. Percentage procurement requirements for Years 1, 2 and 3 under an LSE-based procurement framework should not be established until a central procurement entity structure is determined.

Revise FOF No. 15 as follows:

15. The Commission supports facilitating transparency in the RA contracting process. The Energy Division should provide an annual report disclosing all resources used to satisfy all LSEs’ aggregate RA obligations in the previous year, without disclosing the number of megawatts associated with the resources, and without disclosing LSE-specific resource information.

#### B. Revised Conclusions of Law (“COL”):

Revise COL No. 3, as follows:

3. A multi-year local requirement framework should not be implemented until a central procurement structure is implemented.

Revise COL No. 6, as follows:

6. The minimum percentages required for LSEs' multi-year local procurement should not be established until the role of a central buyer is established.

C. Revised Ordering Paragraphs ("OP"):

Revise OP No. 2, as follows:

2. The individual LSE multi-year local Resource Adequacy procurement requirement shall be implemented upon the later of the 2021 RA compliance year or when a central procurement structure is implemented.

Revise OP No. 11, as follows

11. The minimum required percentage for procurement by an LSE in each year shall be determined when the central buyer structure is established.

Revise OP No. 18, as follows:

18. Early each calendar year, the Energy Division shall post a summary list of the resources listed on all load serving entities' monthly resource adequacy plans for the previous year. The disclosed information shall be provided on an aggregated basis and shall include scheduling resource ID, zonal location, and local area (if applicable).