

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**07/02/19
08:00 AM

July 2, 2019

Agenda ID #17556
Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 17-09-020:

This is the proposed decision of Administrative Law Judge (ALJ) Chiv. 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 August 1, 2019 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)(B).

/s/ ANNE E. SIMON _____

Anne E. Simon
Chief Administrative Law Judge

AES:eg3

Attachment

Decision PROPOSED DECISION OF ALJ CHIV (Mailed 7/2/2019)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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.

Rulemaking 17-09-020

**DECISION DENYING THE PETITION FOR MODIFICATION
OF SHELL ENERGY NORTH AMERICA (US), L.P.****Summary**

This decision denies the petition for modification of Decision 19-02-022 filed by Shell Energy North America (US), L.P.

This proceeding remains open.

1. Background

In Decision (D.) 19-02-022, the Commission adopted several refinements to the Resource Adequacy (RA) program. In particular, the decision adopted implementation details for multi-year local RA procurement to begin for the 2020 compliance year. Such implementation details included establishing a three-year forward duration of multi-year procurement and determining the specific percentages of required procurement for each forward year.¹

¹ D.19-02-022 at 19-27.

The decision also declined to adopt a central procurement structure due, in part, to the lack of consensus around the appropriate central buyer and central procurement structure. Rather, the decision directed parties to develop workable implementation solution for central procurement in workshops with a decision on the central procurement structure expected in the fourth quarter of 2019.²

On March 18, 2019, Shell Energy North America (US), L.P. (Shell or Petitioner) filed a petition for modification of D.19-02-022 (petition). Shell first requests that the decision be modified to delay implementation of multi-year local procurement until the 2021 compliance year, based on the deferral of the central procurement decision to Fall 2019. Without a decision on the central procurement structure, Shell argues that multi-year local procurement will be fraught with uncertainty and risk of stranded costs.

Shell also takes issue with the decision's directive that Energy Division staff post a summary of the resources listed on each load-serving entity's (LSE) monthly RA plans for the previous year. Shell argues that posting information on an LSE-specific basis discloses confidential, protected information under D.06-06-066 and D.08-04-023. Shell petitions that the decision be modified to provide LSE resource information in an aggregated format.

No responses to Shell's petition were filed.

2. Discussion

2.1. Standard of Review

Public Utilities (Pub. Util.) Code § 1708 gives the Commission authority to "rescind, alter, or amend any order or decision made by it." We note that modifying an existing decision, however, is an extraordinary remedy that must

² D.19-02-022 at 19.

be carefully applied to keep with the principles of res judicata since “Section 1708 represents a departure from the standard that settled expectations should be allowed to stand undisturbed.”³

2.2. Implementation of Multi-Year Procurement

Petitioner first contends that the implementation of a multi-year local procurement program should be delayed until the 2021 compliance year because the Commission is deferring a decision on a central procurement entity until Fall 2019. Shell states that requiring multi-year local procurement to go forward without a decision on the central procurement entity will “likely lead to uneconomic decisions that are costly to ratepayers.”⁴

Petitioner argues that how the central buyer is structured, how price transparency is established in local areas, how to deal with load migration, and who the central buyer will be “are all critical issues that go hand in hand with a multi-year forward procurement obligation.” Petitioner states that “the Commission failed to recognize the connection between these two issues.”⁵ According to Shell, going forward with multi-year procurement amplifies uncertainties for LSEs and increases the potential for stranded local RA costs. Petitioner requests modification of the decision to delay implementation of the multi-year procurement obligation until a decision is issued on the central procurement structure.

The Commission finds that Petitioner attempts to relitigate issues that have been raised and considered in D.19-02-022. In weighing the extensive volume of comments and proposals in this proceeding, the Commission considered

³ 1980 Cal. PUC LEXIS 785, 24; *see also* 2015 Cal. PUC LEXIS 278, 7.

⁴ Petition at 6.

⁵ *Id.*

numerous configurations of multi-year local RA procurement with or without a central buyer. Multiple parties recommended delaying implementation of a central procurement structure while moving forward with the multi-year local RA framework.

In adopting its decision, the Commission carefully considered the issues raised in the petition. For example, in the decision, we found that “[b]ecause we are not adopting a central procurement structure at this time, and load migration and cost allocation issues are not addressed under an LSE-based procurement framework, setting a lower 50% requirement in Year 3 minimizes stranded cost issues that may arise.”⁶

The Commission concludes that the issues in Shell’s petition were raised and considered in D.19-02-022. Accordingly, we find no basis to modify the decision.

2.3. Confidentiality of Resource List

Petitioner next addresses the decision’s directive that Energy Division staff post a summary of the resources listed on each LSEs’ monthly RA plans for the previous year on the Commission’s website. Shell argues that disclosing “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 part of an LSE’s proprietary procurement offering.”⁷ Shell states that this information is confidential and protected under D.06-06-066 and D.08-04-023.⁸ Petitioner requests a modification to the decision to direct Energy Division to provide the LSE resource information, including scheduling resource

⁶ D.19-02-022 at 27.

⁷ Petition at 9.

⁸ *Id.*

ID, zonal location, and local area, in an aggregated format rather than on an LSE-specific basis.

First, the Commission finds that Petitioner again attempts to relitigate an issue that was raised and considered in D.19-02-022.⁹ AReM specifically raised these issues in comments to the proposed decision and these comments were considered before the Commission reached its final decision.¹⁰

However, further to addressing Shell's allegations, much of the information ordered to be disclosed in D.19-02-022 is public information as stated in D.08-04-023, Appendix B. Under Section IV(C) of the Energy Service Provider (ESP) matrix, for bilateral contracts, it states the following are public information: "[c]ontract summaries public, including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date."¹¹

Additionally, D.19-02-022 determined that the disclosed information at issue is not market sensitive.¹² Petitioner has not met its burden to refute the Commission's determination. As adopted in D.06-06-066, "[m]ere recitation of the conclusory statement that information is a trade secret, or is market sensitive procurement information, is not enough to meet the burden of proving entitlement to confidential treatment."¹³

⁹ D.19-02-022 at 35.

¹⁰ See AReM's Comments to the Proposed Decision at 14.

¹¹ D.08-04-023, Appendix B at 3; *see also* D.08-04-023, Ordering Paragraph 4 at 27.

¹² D.19-02-022 at 36.

¹³ D.06-06-066, as modified by D.07-05-032, Ordering Paragraph 5 at 81.

For the foregoing reasons, the Commission concludes that the confidentiality issue in Shell's petition was raised and considered in D.19-02-022, and we find no basis to modify the decision.

2.4. Conclusion

Accordingly, the Commission finds no basis to modify the decision and denies Shell's Petition for Modification of D.19-02-022.

3. Comments on Proposed Decision

The proposed decision of Administrative Law Judges Allen and Chiv were mailed to the parties in accordance with Section 311 of the Public Utilities Code, and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

4. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Peter V. Allen and Debbie Chiv are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. The issues raised by Petitioner pertaining to the adoption of multi-year local RA procurement were raised and considered in D.19-02-022.
2. The issue raised by Petitioner pertaining to the confidentiality of posting a summary list of resources of each LSEs' monthly RA plans was raised and considered in D.19-02-022.

Conclusions of Law

1. Petitioner has not demonstrated good cause to modify D.19-02-022.
2. The Petition for Modification of D.19-02-022 should be denied.

ORDER

IT IS ORDERED that:

3. Shell Energy North America (US), L.P.'s Petition for Modification of Decision 19-02-022 is denied.

4. This proceeding remains open.

This order is effective today.

Dated _____, 2019, at San Francisco, California.