

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Sunnova Community
Microgrids California, LLC for a Certificate of
Public Convenience and Necessity to
Construct and Operate Public Utility
Microgrids and to Establish Rates for Service.

Application 22-09-002
(Filed September 6, 2022)

**COMMENTS OF THE CALIFORNIA ENERGY STORAGE ALLIANCE ON THE
PROPOSED DECISION GRANTING THE PUBLIC ADVOCATES OFFICE OF THE
CALIFORNIA PUBLIC UTILITIES COMMISSION MOTION TO DISMISS SUNNOVA
COMMUNITY MICROGRIDS CALIFORNIA, LLC'S APPLICATION**

Jin Noh
Policy Director

Grace Pratt
Policy Analyst

CALIFORNIA ENERGY STORAGE ALLIANCE
10265 Rockingham Dr. Suite #100-4061
Sacramento, California 95827
Telephone: (510) 665-7811
Email: cesa_regulatory@storagealliance.org

March 6, 2023

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In accordance with Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the California Energy Storage Alliance (“CESA”) hereby submits these comments on the *Proposed Decision Granting the Public Advocates Office of the California Public Utilities Commission Motion to Dismiss Sunnova Community Microgrids California, LLC’s Application* (“PD”), issued by Administrative Law Judge (“ALJ”) Collin Rizzo on February 14, 2023.

I. INTRODUCTION.

Across California and the state’s energy agencies, there has been a recognition of the benefits that microgrids can provide. This recognition was codified by Senate Bill (“SB”) 1339, which directed the Commission to take specified actions to facilitate the commercialization of microgrids for distribution customers. Up until this time, the Commission has pursued microgrid commercialization pathways for microgrids either entirely behind the meter (“BTM”) or using existing utility infrastructure, with the utilities therefore operating that infrastructure and the microgrid as a whole. However, Sunnova Community Microgrids California (“SCMC”) proposes a unique model in their Application for a Certificate of Public Convenience and Necessity (“CPCN”) that would allow SCMC to provide service as a “microutility” or an electrical corporation serving less than 2,000 customers under Public Utilities Code (“PUC”) Section 2780.

Although PUC Section 2780 allows for microutilities to be established in California, it has only been used in limited circumstances thus far in the state’s history. For this reason, the

Commission should consider SCMC’s proposal thoroughly and should scrutinize the different elements of the proposal, including how customers will be provided service as part of a community, how reliable and safe electric service will be ensured through resource design, how SCMC will optimize its resources, the rates and terms of service that customers will face, among other elements of the proposed framework and proposal. The Commission has acknowledged that microutilities do have the potential to advance microgrids in California and increase consumer choice. Energy Division staff shared the microutility model in a Resiliency and Microgrids Working Group (“RMWG”) meeting in February 2021, sharing how the Commission could oversee these entities and raising further questions to be discussed on this model.¹ However, the Commission has yet to raise or advance these discussions in other venues. The Commission would have to consider some of these issues in evaluating the SCMC Application, and SCMC’s proposal provides a real-life example of how this model would work. Therefore, CESA believes it is important to fully consider the merits and drawbacks of the Application through the full development of an evidentiary record.

CESA is disappointed that the PD proposes an outright dismissal of SCMC’s Application. While there is perhaps insufficient information to grant a CPCN at this time, as highlighted above, Sunnova’s Application merits the development of an evidentiary record, where parties can conduct discovery and cross-examine witnesses in evidentiary hearings. After the development of a full record, the Commission can make an informed decision about whether SCMC’s Application should be granted, with or without modification. To this end, CESA makes the following comments on the PD:

- The Commission should allow for a hearing on the Application.
- Moving discussion of the items in SCMC’s application to the Microgrids Proceeding (R.19-09-009) is inappropriate and ineffective.
- The PD fails to consider the benefits that could be provided through SCMC’s model, including microgrid benefits outlined by SB 1339 and Commission decisions.

¹ RMWG presentation on *Multi Property Tariff Phase: Alternatives to Multi Property Tariff* presented by Energy Division on February 22, 2021 at Slides 11-14.

II. THE COMMISSION SHOULD ALLOW FOR A HEARING ON THE APPLICATION.

In the PD, the Commission dismisses the Application in its entirety, fully granting the Public Advocates Office at the California Public Utilities Commission's ("Cal Advocates") Motion to Dismiss the Application. CESA believes that a full and outright dismissal is premature at this time. As highlighted by SCMC in its replies to protests of its Application, "the arguments raised by the Protestors reinforce the need for a hearing so their asserted issues of fact and law can be fully aired and examined through an evidentiary record."² The same holds true of the arguments raised in the Motion to Dismiss submitted by Cal Advocates, which largely repeat the issues raised in their original protest to the Application. CESA agrees with SCMC that the full development of a record is needed in order to evaluate this CPCN. Most importantly, evidentiary hearings will be needed and will allow for parties, including those that protested this application, to examine and cross-examine relevant witnesses from SCMC and other subject matter experts. This will allow for parties to raise important questions but will also allow SCMC to fully respond to those questions and concerns to share further information. If after the full development of an evidentiary record, the Commission continues to find SCMC's proposal inadequate or not aligned with ratepayer or state interests, then the Commission would be within its right to reject the proposal and not issue a CPCN, while also providing guidance on addressing the key areas of deficiencies.

The PD accepts Cal Advocates Motion to Dismiss largely for three reasons: (1) SCMC "fails to provide the information required for a CPCN";³ (2) SCMC seeks "unauthorized"⁴ exemptions to PUC statute; and (3) issues surrounding multi-customer community microgrids are being discussed in the ongoing microgrids proceeding, Rulemaking ("R.") 19-09-009.⁵ CESA's comments herein focus in particular on the third reason above as an inappropriate reason to dismiss this Application (see Section III).

Furthermore, for the first item surrounding potential deficiencies in SCMC's Application, SCMC raises that in previous CPCN applications with deficiencies, applicants have been "afforded

² SCMC Reply at 3.

³ PD at 1.

⁴ *Ibid.*

⁵ PD at 16.

the opportunity to amend or supplement its application”⁶ to cure those deficiencies. Additional information could be added through supplemental testimony provided by SCMC if the Commission seeks comment on particular items. The Commission states that SCMC is seeking exemption to having its rates regulated,⁷ but SCMC has shared information on how its electric rates would be overseen and regulated by the Commission.⁸ If more information is needed on how the Commission will have oversight over these types of rate structures, then supplemental testimony, discovery, and/or hearings should be held on these elements. After the completion of an evidentiary record, the Commission could still find the Application deficient and dismiss it or reject the CPCN. However, SCMC will be afforded no such opportunity if the Application is dismissed in its entirety, as done in this PD.

III. MOVING DISCUSSION OF THE ITEMS IN SCMC’S APPLICATION TO THE MICROGRIDS PROCEEDING (R.19-09-009) IS INAPPROPRIATE AND INEFFECTIVE.

The PD states that SCMC’s argument that a motion to dismiss is a drastic measure to take at this time “would be more persuasive were there not already an ongoing rulemaking specifically intended to ensure the orderly adoption of microgrids in California,”⁹ citing the current scope and activities in R.19-09-009. However, the scope of this Application proceeding would differ from the scope of R.19-09-009. Up until this point, R.19-09-009 has focused on microgrid operations either behind-the-meter at single customer sites or multi-customer microgrids operated at least partially by the investor-owned utilities (“IOUs”) as distribution system owners and operators.¹⁰

Track 4 of this proceeding is set to cover Microgrid Multi-Property Tariffs, answering the following questions:

1. To protect the public interest, what information should a new multi-property microgrid tariff include? For example, should the microgrid multi-property tariff include any of

⁶ SCMC Reply at 9 citing D.18-06-028.

⁷ PD at 18.

⁸ SCMC Application at Section VI.

⁹ PD at 16.

¹⁰ For example, in the Microgrid Incentive Program (MIP), the IOUs will be responsible for maintaining the distribution system within the community microgrid. The IOUs will also determine when the facility will be islanded or not. MIP Awardees will be responsible for operating resources (generation, storage, demand-side resources) within the microgrid.

- the following: (1) a description of the roles and responsibilities of participating entities; (2) configuration and technology eligibility; (3) mechanisms to ensure consumer and ratepayer protections; (4) mechanisms to prevent cost-shifting; (5) contractual obligations to ensure operational security and safety.
2. What terms and conditions should a new microgrid multi-property tariff include? For example, should the new tariff include: (a) a new rate schedule; (b) new contracts or agreements; (c) new electric rules.
 3. What, if any, program elements or specific features should the Commission include in a new microgrid multi-property tariff?
 4. What additional or enhanced consumer protections for customers taking service under the new microgrid multi-property tariff should be adopted by the Commission? What additional or enhanced consumer protections for ratepayers who are not participating should be adopted by the Commission?

CESA acknowledges and fully supports the creation of a microgrid multi-property tariff as important, where Track 4 of R.19-09-009 will potentially discuss some of the important areas of SCMC's Application, including mechanisms to ensure consumer and ratepayer protections for microgrid customers and contractual obligations to ensure operational security and safety of a microgrid system. Notwithstanding its importance, consideration of multi-property tariffs within Track 4 has also been delayed multiple times during this proceeding. When this issue was originally scoped in August 2021, the Commission anticipated having discussions on these issues starting in November 2021 and continuing throughout 2022.¹¹ This schedule was delayed in a subsequent Scoping Ruling, which set out a schedule to start discussions in June 2022.¹² However, at this point, no progress has been made on these discussions and a Ruling on tariff guiding principles has yet to be released. Consideration of some of these issues in SCMC's CPCN Application will therefore accelerate the timely consideration of these urgent issues and provide a

¹¹ *Assigned Commissioner's Amended Scoping Memo and Ruling Setting Track 4: Expedited Phase 1, and Phase 2* filed in R.19-09-009 on August 17, 2021.

¹² *Assigned Commissioner's Amended Scoping Memo and Ruling Resetting Track 4* filed in R.19-09-009 on December 17, 2021.

concrete example and case study on how various rules and regulations would apply, rather than having much of the discussion remain in the theoretical policy space.

Importantly, CESA finds the deferral of these issues to R.19-09-009 to be inappropriate because a microgrid tariff will only apply to *existing utilities* under the Commission’s jurisdiction. SCMC’s Application requires evaluation on an individual basis. Nowhere in the above scope is there discussion of the merits of allowing for new microutility to build, maintain, and operate resources, as well as provide bundled electric service to customers. There are many aspects of creating a microutility that must be considered in the individual context of that microutility to ensure compliance with Section 2780. These mechanisms fall outside of the purview of the microgrid’s proceeding and are appropriately considered in a CPCN application such as this one.

IV. THE PD FAILS TO CONSIDER THE BENEFITS THAT COULD BE PROVIDED THROUGH SCMC’S MODEL, INCLUDING MICROGRID BENEFITS OUTLINED BY SB 1339 AND COMMISSION DECISIONS.

CESA is also disappointed that the Commission fails to outline the potential benefits of SCMC’s model in the PD. After the submission of the Application, over fifteen organizations responded to the Application in support of the novel model being proposed. The Microgrid Resources Coalition (“MRC”) summarizes how the Application poses a “tremendous opportunity for community microgrids in California and the benefits that they can provide to the grid, ratepayers, and communities across the state.”¹³ Many of the benefits outlined by parties reflect some of the benefits of community microgrids generally, including providing resiliency resources when the larger transmission or distribution system is offline, optimizing the use of BTM and in front of the meter (“IFOM”) resources together, with both of these leading to reduced costs in electric investments and the costs that are faced by businesses and the economy generally when there are power outages. Due to climate change and extreme weather, many areas of California have been experiencing local outages due to Public Safety Power Shutoff (“PSPS”) events, wildfire, and extreme rain and winter weather, leading many to seek out the resiliency solutions microgrids can provide. Additionally, microgrids that are connected to the larger grid become system-wide resources. As an islandable system, microgrids can serve as large (aggregated) load reduction resources in specific geographic areas, and within the microgrid, individual distributed

¹³ MRC Response at 3.

energy resources (“DERs”) also have the potential to export power beyond the microgrid boundary to the larger system, supporting the state’s urgent electric capacity needs.

However, SCMC’s application also provides some unique benefits that are not necessarily inherent to community microgrids. First, SCMC will be focusing on deploying clean energy resources, including BTM and community solar and energy storage,¹⁴ which will help contribute to California’s clean energy and climate goals as required by Senate Bill (“SB”) 100 and recently modified by SB 1020 to include interim clean energy targets. Additionally, SCMC’s model, by focusing on newly constructed residential communities, can also help provide these communities with Title 24 compliance pathways by providing access to both onsite and community solar and by reducing electric costs, making the electrification requirements of Title 24 more affordable.

In considering whether full dismissal of the Application is appropriate, the Commission should weigh the benefits as outlined above, alongside the other benefits that have been raised by parties in the limited record of this proceeding thus far. If the Commission were to fully consider these benefits, CESA believes that the Commission would find it to be prudent to continue through the evidentiary process to further quantify and qualify these benefits against the costs of SCMC’s proposal to determine whether SCMC can provide cost-effective electric service to its customers.

V. CONCLUSION.

CESA appreciates the opportunity to submit these comments on the PD and looks forward to collaborating with the Commission and stakeholders in this proceeding.

Respectfully submitted,



Jin Noh
Policy Director
CALIFORNIA ENERGY STORAGE ALLIANCE

March 6, 2023

¹⁴ SCMC Application at 2.