

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED

10/10/22

04:59 PM

A2209002

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

PROTEST OF THE PUBLIC ADVOCATES OFFICE

MICHAEL EINHORN

Attorney
Public Advocates Office

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-1592
Email: Michael.einhorn@cpuc.ca.gov

KRISTIN ROUNDS

Regulatory Analyst
FRANK MCELVAIN
Utilities Engineer
Public Advocates Office

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-2430
Email: Kristin.Rounds@cpuc.ca.gov
Frank.McElvain@cpuc.ca.gov

October 10, 2022

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

PROTEST OF THE PUBLIC ADVOCATES OFFICE

I. INTRODUCTION

Pursuant to the Rule 2.6 of the California Public Commission’s (Commission) Rules of Practice and Procedure (Rules), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) timely submits¹ this protest to Sunnova Community Microgrids California, LLC’s (SCMC) application (Application) for a Certificate of Public Convenience and Necessity (CPCN) to construct and operate public utility microgrids and to establish rates for service.²

SCMC proposes a “first-of-its-kind”³ conceptual approach to microgrid implementation and regulation. SCMC seeks authorization to own and operate large multi-customer microgrids⁴ in any California county⁵ and to sell power through private

¹ Cal Advocates’ protest is timely filed under Rule 2.6(a). The notice of the filing of the Application first appeared on the Commission’s Daily Calendar on September 8, 2022. See Daily Calendar, September 8, 2022, accessed at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M496/K841/496841726.PDF>

² Application (A.) 22-02-008, *Application of Sunnova Community Microgrids California, LLC (“SCMC”) for Commission Approval for a Certificate of Public Convenience and Necessity to Construct and Operate Public Utility Microgrids and to Establish Rates for Service* (Application).

³ Application at 51.

⁴ Application at 3.

⁵ Application at 57.

contracts at rates, terms, and conditions negotiated privately with customers⁶ without Commission tariffs, hearings, or other rules applicable to electrical corporations.⁷ SCMC asserts that the Commission should, for the first time, rely on the Public Utilities Code Section 2780 “microutility” statute⁸ to authorize SCMC’s private multi-customer microgrid model.

Cal Advocates protests SCMC’s multi-customer microgrid Application on several grounds, including the fact that it would require the Commission decide foundational issues that the Commission is currently addressing, or will soon address, in Rulemaking (R.) 19-09-009, *Order Instituting Rulemaking Regarding Microgrids Pursuant to Senate Bill 1339* (Rulemaking).⁹ As SCMC concedes,¹⁰ the Commission is developing the multi-customer microgrid tariff in the Rulemaking. Yet, SCMC’s Application raises far-reaching and important issues that are under consideration in the Rulemaking, where the Commission receives input from a wide range of parties to develop a regulatory framework for multi-customer microgrids to support microgrid development. The Commission should consider whether to defer resolution of the Application until it has established a regulatory framework for multi-customer microgrids¹¹ in the Rulemaking.

Cal Advocates also protests the Application on the grounds that it fails to include sufficient information to determine whether SCMC’s proposal is just and reasonable, that it is or will be necessary, and that it will ensure public safety. SCMC fails to provide information, including information required by Rule 3.1, necessary for the Commission

⁶ Application at 42 (“SCMC requests that the Commission authorize SCMC to enter into agreements for market-based, negotiated rates and terms and conditions with its customers for electric supply and microgrid services.”)

⁷ Application at 43 (asserting that rates and terms and conditions of service “can best be addressed by the Commission’s complaint or investigatory process rather than requiring cost justification tariffs”), at 55.

⁸ Application at 57.

⁹ R.19-09-009, *Order Instituting Rulemaking Regarding Microgrids Pursuant to Senate Bill 1339* is currently constructing a multi-customer microgrid tariff.

¹⁰ Application at 6.

¹¹ Multi-customer microgrids are referred to in this protest as “microgrids” unless otherwise specified.

to determine whether SCMC's microgrid proposal is reasonable and whether to issue a CPCN under Public Utilities Code Section 1001.¹²

II. ISSUES TO BE ADDRESSED IN THIS PROCEEDING

Upon initial review of the Application, Cal Advocates identifies several issues that the Commission should consider within the scope of this proceeding. Cal Advocates may identify and address additional issues as it proceeds with discovery and analysis.

- A. Whether a Commission decision on this Application will overlap, pre-determine, or conflict with issues in R.19-09-009, *Order Instituting Rulemaking Regarding Microgrids Pursuant to Senate Bill 1339*.
- B. Whether SCMC has met its burden to demonstrate that its proposed microgrid framework and request to establish rates are just, reasonable, and necessary.
- C. Whether SCMC has met its burden to demonstrate that its microgrid proposal will ensure public safety.
- D. Whether SCMC has provided the information required by Rule 3.1 (as addressed in greater detail below due to the number of issues that fall within this broad issue).
- E. Whether SCMC has demonstrated that present or future public convenience and necessity require or will require

¹² Unless otherwise stated, all references to Section are to the Public Utilities Code.

construction of SCMC's proposed microgrids, as required by Section 1001.

- F. Whether SCMC has provided sufficient information concerning technical and engineering issues.
- G. Whether SCMC's proposal to waive Affiliate Transaction Rules (ATRs) is reasonable.
- H. If the Commission develops a regulatory framework for microuilities in this Application, rather than a rulemaking, does SCMC qualify as a microuility under Section 2780?
- I. If the Commission develops a regulatory framework for microuility microgrids in this Application rather than the microgrid Rulemaking, what regulatory standards should apply?
- J. Other related issues as may arise.

IV. CATEGORIZATION AND PROPOSED SCHEDULE

Cal Advocates agrees that this Application should be categorized as ratesetting. Evidentiary hearings may be necessary. Cal Advocates proposes to address the schedule at the prehearing conference to allow for further review and discussion.

IV. CONCLUSION

SCMC's failure to coordinate its Application with the Rulemaking means that the Commission would have to address numerous comprehensive and important issues with far less robust analysis and stakeholder input than in the Rulemaking. The Application would require Commission address those issues without even the information required for a CPCN application.

Cal Advocates requests that the Commission classify this proceeding as ratesetting and allow parties to discuss the schedule at the prehearing conference. The Commission should include the issues identified in this protest within the scope of this proceeding.

///

///

Since the Application proposes a novel, first-of-its-kind approach to microgrids, Cal Advocates also recommends that the Commission adopt a scope that is sufficiently broad to include related issues necessary to resolve the Application.

Respectfully submitted,

/s/ MICHAEL EINHORN

MICHAEL EINHORN

Attorney

Public Advocates Office

California Public Utilities Commission

505 Van Ness Avenue

San Francisco, CA 94102

Telephone: (415) 703-1592

Email: michael.einhorn@cpuc.ca.gov

October 10, 2022