



**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 No. 22-09-002
(Filed September 6, 2022)

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**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) PROTEST
OF THE 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**

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Pursuant to Rule 2.6(a) of the Rules of Practice and Procedure (Rules) of the California Public Utilities Commission (Commission or CPUC), Pacific Gas and Electric Company (PG&E) respectfully protests the *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).¹

I. INTRODUCTION AND SUMMARY OF PROTEST

PG&E supports innovative policies and initiatives to increase the resiliency of California's electric sector, including through community-scale microgrids like those proposed in the Application. PG&E particularly supports the development of clean and cost-effective microgrids in California's most vulnerable and historically disadvantaged communities. Toward that end, PG&E has led efforts to combine distributed energy resources owned or procured by communities with PG&E's distribution infrastructure to empower communities to create

¹ The Application was served on September 1, 2022 and notice of the filing first appeared in the Commission's Daily Calendar on September 8, 2022, making the deadline for filing this protest October 10, 2022 under Rule 2.6(a).

microgrids that meet each community’s particular needs and preferences.² PG&E is also actively engaged in Commission Rulemaking (R.) 19-09-009, where the Commission is in the final stages of approving a new statewide Microgrid Incentive Program (MIP) to build on PG&E’s initial work in this area,³ and where the Commission is also poised to consider a multi-property microgrid tariff.⁴ Thus, Sunnova Community Microgrids California’s (SCMC) Application should be considered in the context of the ongoing policy development in this area.

At its core, the Application requests that the Commission interpret and apply provisions of state law related to an “electric microutility”⁵ to a particular business model for serving new developments in California. As SCMC notes, the potential for a microutility to develop a multi-customer microgrid has already been raised by Commission staff in the Microgrids and Resiliency Rulemaking (R.19-09-009).⁶ While the State may benefit from greater clarity on the rules and regulations that would apply to a microutility using a business model like the one

² See D.20-06-017, pp. 130-131 (Ordering Paragraph (OP) 16 (approving with modifications PG&E’s Community Microgrid Enablement Program (CMEP); Letter from Edward Randolph, CPUC, to Sidney Bob Dietz II, PG&E, July 13, 2021 (approving PG&E Advice Letter 6168-E: Submission of Community Microgrid Enablement Tariff (CMET) in Final Form and Pro Forma of Microgrid Operating Agreement (MOA)). These programs resulted in the first community microgrid combining third-party generation and storage resources with PG&E distribution infrastructure at the Redwood Coast Airport. See generally <https://schatzcenter.org/acv/>.

³ See *Proposed Microgrid Incentive Program (MIP) Implementation Plan of San Diego Gas & Electric Company (U 902-E), Pacific Gas and Electric Company (U 39-E), and Southern California Edison Company (U 338-E)*, filed in R.19-09-009 on December 3, 2021. As of the date of this filing, the proposed MIP Implementation Plan remains pending before the Commission.

⁴ *Assigned Commissioner’s Amended Scoping Memo and Ruling Resetting Track 4*, filed in R.19-09-009 on December 17, 2021, pp. 6-7 (stating that consideration of a microgrid multi-property tariff is within the scope of upcoming Phase 2 of Track 4 in R.19-09-009, including guiding principles and formation of a tariff). Note that while the Amended Scoping Memo stated an expectation at page 9 to begin work on Phase 2 of Track 4 in June 2022, the proceeding has been delayed, with the multi-property microgrid tariff the next new issue to be addressed.

⁵ See Cal. Pub. Util. Code §§ 2780 (defining “electric microutility”); 2780.1 (providing legislative findings regarding how electric microuilities should be regulated).

⁶ *Microgrids and Resiliency Staff Concept Paper*, filed on July 22, 2020 in R.19-09-009 as Attachment B to *Administrative Law Judge’s Ruling Requesting Comment On The Track 2 Microgrid And Resiliency Strategies Staff Proposal, Facilitating The Commercialization Of Microgrids Pursuant To Senate Bill 1339*, p. 42 (describing how “[m]icrogrids could potentially fall under the category of “electric microuilities” as defined under Public Utilities Code Section 2780-2780.1,” and exploring how the resulting microuilities may be regulated).

proposed by SCMC, the relief sought in this Application cannot be granted based on the high-level information provided by SCMC. Instead, the myriad issues that the Application raises, most of which are not acknowledged in the Application itself and are listed more fully in Section II.A of this Protest, should be addressed, if the Commission so desires, as part of a broader rulemaking. This is true for at least two reasons. First, a rulemaking is the proper procedural vehicle when the Commission seeks to “adopt, repeal, or amend rules, regulations, and guidelines for a class of public utilities.”⁷ That is precisely what SCMC has asked the Commission to do in its Application: to adopt rules for electric microutilities as a class of public utilities. Second, SCMC’s Application is deficient under the statutes governing the issuance of a Certificate of Public Convenience and Necessity (CPCN). As more fully described in Section II.B of this Protest, the Commission would commit legal error if it were to grant a CPCN to SCMC because SCMC has failed to provide the necessary facts and other information that would enable the Commission and stakeholders to review the request for reasonableness and necessity. Instead, to the extent the Commission wishes to further explore the ideas set forth in the Application, it should develop rules and regulations that would govern electric microutilities as a class in the context of a rulemaking, and then SCMC should submit an Application seeking a CPCN, if it wishes, demonstrating how particular investments in a particular service area meet the requirements set forth for electric microutilities in the rulemaking and otherwise meet the applicable legal requirements for a CPCN. The upcoming phases of the Microgrids and Resiliency Rulemaking may be an appropriate place to consider further SCMC’s proposed business model.

Notwithstanding the Application’s deficiencies, PG&E appreciates this opportunity to constructively engage with the ideas propounded by SCMC, in order to facilitate the Commission’s and other stakeholders’ consideration of the relative benefits and costs of the proposal on the State. PG&E’s virtues reflect a desire to be both interested and curious about

⁷ Commission Rule 6.1.

how this proposal could further California’s clean energy, reliability, equity, and affordability goals. These goals are the focus of PG&E’s mission and commitment to the triple bottom line of people, planet, and California’s prosperity. As a result, PG&E has viewed this Application through the following lens: What would have to be true in order for the State as a whole and all electric customers to benefit from electric microuilities like those SCMC proposes? How could these microuilities durably meet their customers’ needs and preferences, while also helping to meet state reliability, resiliency, economic development, affordability, and clean energy goals, and while further ensuring that other electricity consumers in the State are not harmed or disadvantaged? These questions lead to the many issues that would have to be further investigated and resolved in an appropriate proceeding, as initially outlined in Section II.A, below.

Finally, as the Commission considers the issues raised in the Application, it may want to consider recent legislation governing the re-opening of Direct Access (DA) service, which emphasized factors to be considered by the Commission to ensure statewide benefits from any increase in DA, and the resulting work of Commission staff to implement that legislation.⁸ The reopening of DA and certifying new forms of public utilities create analogous concerns related to the fragmentation of the providers of energy-related services in California and the resulting complexity of achieving statewide needs, goals, and mandates.

II. PROTEST

A. Scope of Issues to Be Considered

SCMC proposes only three issues that it believes should constitute the scope of this proceeding:⁹

- (1) Whether the Commission should grant SCMC a CPCN under Section¹⁰ 1001;

⁸ See D.21-06-033 (implementing Senate Bill 237, Stats. 2018, Ch. 600, and recommending against further DA expansion). See also Final Staff Report on DA Reopening, Attach. A to D.21-06-033.

⁹ Application, pp. 55-56.

¹⁰ This and the following references to codified sections refer to the California Public Utilities Code, unless otherwise specified.

(2) Whether SCMC’s proposal to enter into agreements with its customers for market-based, negotiated rates and terms and conditions of service is just and reasonable under Public Utilities Code Section 451; and

(3) Whether the Commission should grant SCMC’s request for limited waiver of the Affiliate Transaction Rules.

To the extent the Application is not dismissed for the reasons set forth in Section I of this Protest, PG&E agrees that SCMC’s first and third issues are relevant. PG&E disagrees with SCMC’s second issue, since the key question should be whether a specific rate or set of rates proposed by SCMC is just and reasonable, and not whether the concept of a hypothetical “market-based rate” is just and reasonable.

More importantly, PG&E finds that the Application raises many other issues of critical importance to customers and to state policy that must be considered prior to issuance of a CPCN, even if all other legal requirements for such a CPCN were met. Specifically, even if SCMC’s business model could result in a micrutility as defined in Section 2780, which does not appear to be the case, the legislative history of that statute makes clear that it does not supersede or modify existing laws that are applicable to all electrical corporations in California.¹¹ As noted above, PG&E believes that these issues would most appropriately be addressed, if the Commission so wishes, in a rulemaking rather than in this CPCN Application. To facilitate any further consideration of SCMC’s proposed business model in an appropriate proceeding, PG&E provides the following list of these additional issues that would be necessary to include within the scope:

- How should the Commission define an electric micrutility pursuant to Section 2780?

¹¹ Senate Floor Bill Analysis of AB 2509, 2003 Legis. Bill Hist. CA A.B. 2509, July 9, 2004 (“Senate Floor Analysis”) (“**This bill doesn’t override any statutes generally applicable to electrical corporations, including [Mountain Utilities (MU)].** An expression of the Legislature’s intent that the [Commission] recognize and consider MU’s regulatory burden will do nothing to excuse the [Commission] from its obligations under existing laws to regulate electrical corporations, including MU. It may only give some direction to the PUC in cases where it already has discretion to exclude MU effect to a persuasive letter, or perhaps a resolution. This bill seems to be an equivocal suggestion that MU should not be regulated by the [Commission] because the costs exceed the benefits.”) (emphasis added).

- Is the statutory requirement that a microutility provide “sole-source generation, distribution, and sale of electricity”¹² to its customers consistent with SCMC’s proposed business model?
- Is it appropriate for an affiliated group of corporations using common parent resources under a waiver of the affiliate transaction rules and serving more than 2,000 customers in total to be characterized as microutilities?
- What assurance does the Application provide that the SCMC business model would not result in the selection of more affluent, lower-cost-to-serve communities, thereby excluding low-income and/or higher-cost-to-serve communities?
- What requirements should be placed on the SCMC business model to ensure that it contributes equitably toward statewide clean energy goals and policies, and that it meets Commission-established emissions performance standards for permanent microgrids?
- What requirements should be placed on the SCMC business model to ensure that the microutility contributes equitably toward system and local reliability, including through the Resource Adequacy Program?
- What provisions should be made to address any future failure of a microutility to serve one or more of its customers and a return of the customers to the default provider of last resort (POLR)? How is that POLR compensated adequately for the risk of customer migration?
- Would an SCMC microutility be required to offer universal service within its service area, and, if not, how would isolated customers within that service area be served?
- Would the implementation of SCMC’s business model create higher costs for, or otherwise impede or interfere with, another utility’s ability to serve a community located adjacent to the SCMC microutility?

¹² Cal. Pub. Util. Code § 2780.

- In order to avoid the shifting of costs, are non-bypassable charges warranted for any customers served by an SCMC microutility, and, if so, how should they be calculated?
 - Has an existing utility planned to serve the new load that SCMC now plans to serve, and, if so, has the existing utility incurred costs that would have otherwise been borne by the new load?
 - How will the customers of an SCMC microutility contribute equitably toward statewide programs that provide broad social benefits, including but not limited to Public Purpose Programs?
- Would an SCMC microutility take retail or wholesale service from an interconnecting utility?
- Would an SCMC be the load-serving entity for its customers?
- What demands for standby service would an SCMC microutility place on the interconnecting utility and how would any such demands be equitably compensated?
- What is a reasonable price for an SCMC microutility to be assessed for connection to the broader grid?
- What safety and labor qualification requirements would apply to an SCMC microutility in order to adequately protect against injury to its customers, electrical workers, or the general public, including other utilities' customers, employees, or contractors? For example, PG&E utilizes highly qualified engineers from Local Union 20 of the Engineers and Scientists of California (ESC) and field workers and operators from Local Union 1245 of the International Brotherhood of Electrical Workers (IBEW) to ensure that all utility assets are designed, constructed, inspected, maintained, and operated with the highest degree of quality from highly trained personnel to ensure the safety of employees and the public. These personnel go

through rigorous, multi-year, apprenticeship programs sanctioned by the State¹³ to ensure that only qualified personnel perform these activities. The Commission should consider the qualifications of the individuals who would perform the estimating, design, construction, inspection, maintenance, and operations of any SCMC microutility prior to issuing a CPCN.

- How should just and reasonable rates be established for customers served by the business model proposed by SCMC?
- How would an SCMC microutility comply with statutory requirements regarding retail customer choice, including elections by customers to be served by a Community Choice Aggregator or an Electric Service Provider under the Direct Access Program?
- Whether and how an SCMC microutility would participate in the following Commission-established programs of general applicability to electric corporations:
 - Demand response and energy efficiency programs
 - Low-income and medical baseline rate programs
 - Supplier diversity programs
 - Net energy metering programs
 - The Self-Generation Incentive Program
 - Feed-in tariff programs pursuant to the State's implementation of the federal Public Utility Regulatory Policies Act (PURPA)
 - Integrated resource planning, including ensuring the fulfillment of electricity sector greenhouse gas reduction targets
 - Customer data privacy

¹³ The California Division of Apprenticeship Standards (DAS) consults with employers, such as PG&E, to develop a skilled workforce. The DAS carries out this mission by administering California apprenticeship law and enforcing apprenticeship standards regarding wages, hours, working conditions, and the specific skills required for state certification as a journeyman in an occupation appropriate for apprenticeship.

- Physical and cyber security of utility assets and equipment
- Customer disconnection requirements and due process rights
- Is environmental review of SCMC’s proposal required under state law and, if so, at what stage of the Commission’s consideration of the Application is that review triggered?
- What issues or unintended consequences may appear or be exacerbated by the scaling of SCMC’s proposed business model to many communities?
- What entity should be responsible for operating the interface between an SCMC microutility and the broader electric grid?
 - What terms and conditions should govern the flow of electricity between an SCMC microutility and the broader grid?

PG&E respectfully requests that each of these issues be added to the scope of this proceeding in the event that the Application is not dismissed. Answering these questions will enable the Commission and stakeholders to be confident that establishing this new business model will benefit California as a whole and will not harm customers or create other unintended consequences over time.

B. Legal and Factual Grounds for Protest

In this section, PG&E complies with Rule 2.6(b), which requires that a party protesting an application state the facts or law constituting the grounds for the protest.

1. Legal Grounds for Protest

As filed, the Application is deficient under law and cannot be fully evaluated for reasonableness and necessity. Specifically, the Application does not comply with the following legal requirements.

a. Definition of a Microutility

Section 2780 defines an “electric microutility” as “any electrical corporation that is regulated by the commission and organized for the purpose of providing sole-source generation, distribution, and sale of electricity exclusively to a customer base of fewer than 2,000

customers.” The legislative history makes clear that the bill was sponsored by, and specifically focused on, a single, now defunct utility that served approximately 500 customers in total using only on-site diesel generators.¹⁴ The clear intent of the legislation was to ensure that a microutility would serve only a *de minimis* portion of the total number of electric customers in California by meeting the entire generation needs of those customers.¹⁵ However, the Application requests a CPCN for a microutility to serve an undefined and potentially unlimited number of total customers using a new business model that includes sourcing portions of generation from the grid or other load-serving entities (LSEs).

The only limits that would be placed on the customers to be served by this new microutility are stated in the Application as follows: “SCMC requests authorization to construct and operate microgrids in [each of the 58 counties in California, and in any part of the cities of Sacramento, San Diego, San Francisco, San Jose]: (1) that is not within the service area boundary of a publicly-owned utility (i.e., a city municipal, public or municipal utility district, or irrigation district-owned utility) or a rural electric cooperative utility and (2) where SCMC is not prohibited from serving as a public utility pursuant to a franchise law or agreement.”¹⁶ Thus, there is no assurance that the proposed microutility would serve no more than 2,000 customers, as required by statute.

Further, even if the Application might be implied to suggest that SCMC is proposing to create a separate corporate entity for each new community and to therefore propose a constellation of microuilities, SCMC and/or its parent entity should be treated for policy and

¹⁴ Assembly Floor Bill Analysis for Assembly Bill (AB) 2509 (2004), 2003 Legis. Bill Hist. CA A.B. 2509 (Aug. 12, 2004) (“It appears that MU is the only utility in the state that would qualify as a microutility. . . . MU is a subsidiary company of Kirkwood Ski Resort (KSI) and was originally created to provide electricity to the ski resort. MU then began providing power to the small number of residents and businesses near the resort. Today, KSI, MU's parent company, is also MU's largest customer, using over 70% of MU's load.”).

¹⁵ Mountain utilities was completely isolated from the broader grid, a key distinction from the microgrids proposed by SCMC. See Senate Floor Analysis, *supra* (“According to MU, the closes[t] transmission lines are over 30 miles away. MU is not part of the grid managed by the Independent System Operator and its generation portfolio consists of six diesel engines with a capacity of 4,800 kilowatts.”).

¹⁶ Application, p. 57.

legal reasons as a single entity for purposes of the microutility definition. First, the Application requests waivers of affiliate transaction rules to allow SCMC to utilize its parent company's resources to carry out the affiliated utilities' work,¹⁷ making clear that the business model relies on common resources even if the corporate entities are separate. Second, allowing the piecemealing of the communities served by SCMC's business model into separate microutilities simply to meet the statutory definition evades the policy purpose of the statutory definition. If service by a microutility becomes the predominant model for providing electricity to all or even many new planned communities in California, then the business model could result in inappropriate exemptions from regulation for entities with large aggregate impacts on California's electricity sector.

b. Design Information

Section 1003 requires that an application for a CPCN to construct new utility infrastructure include “[p]reliminary engineering and design information,” including specifically information related to the operating characteristics of proposed thermal electric generation equipment like the backup generators proposed in the Application.¹⁸ Similarly, Section 1005(b) requires that when the Commission issues a CPCN, it specify “the operating and cost characteristics of the plant, line, or extension, including, but not limited to, the size, capacity, cost, and all other characteristics of the plant, line, or extension which are specified in the information which the gas and electrical corporations are required to submit, pursuant to Section 1003”

SCMC fails to provide this information and instead proposes to provide generation and load information as part of future filings “for each specific microgrid,” after the CPCN is

¹⁷ See *id.*, pp. 52-55.

¹⁸ Cal. Pub. Util. Code § 1003(a). See also Commission Rule 3.1(a) (requiring an application for new utility facilities to include “[a] full description of the proposed construction or extension, and the manner in which the same will be constructed.”); Commission Rule 3.1(1)(3) (requiring “Estimated capital and operating costs of power to be generated by the proposed plant for all competitive fuels which may be used under legislative restrictions in the proposed plant.”).

granted.¹⁹ These future filings would include an “advisory letter process or another mechanism.”²⁰ The statutory requirements cannot be deferred in this way, and so no CPCN should be issued until the information is provided and subjected to public review and comment.

c. Project Implementation Plan

Section 1003(b) requires the CPCN application to provide a “plan showing how the project would be contracted for and constructed. This plan shall show how all major tasks would be integrated and shall include a timetable identifying the design, construction, completion, and operation dates for each major component of the plant, line, or extension.” Again, the Application would unlawfully defer providing this information until after the CPCN is granted.

d. Cost Estimate

Section 1003(c) requires the CPCN application to provide “[a]n appropriate cost estimate, including preliminary estimates of the costs of financing, construction, and operation, including fuel, maintenance, and dismantling or inactivation after the useful life of the plant, line, or extension.” Similarly, Rule 3.1(f) requires the Application to detail “the estimated cost of the proposed construction or extension and the estimated annual costs, both fixed and operating associated therewith” and information showing that it is “economically feasible.” Section 1005.5(a) further requires that whenever the Commission issues a CPCN for utility plant estimated to cost greater than \$50 million, it specify in the CPCN “a maximum cost determined to be reasonable and prudent for the facility.”

Again, the Application would unlawfully defer providing this information until after the CPCN is granted.²¹ A “hypothetical” or “proxy” cost estimate, like the one provided by the Application,²² is insufficient to allow for review of the reasonableness of the proposed costs and

¹⁹ Application, p. 51.

²⁰ *Id.*

²¹ *See id.*, p. 49 (“As part of each project-specific filing . . . SCMC will include a statement providing the estimated cost of the proposed construction or extension and the estimated annual costs, both fixed and operating associated therewith.”).

²² *See id.*

benefits. Finally, although the Application claims that each specific microgrid project will have a cost of less than \$50 million,²³ it appears that the CPCN would approve a business model that could foreseeably result in multiple microgrids, the total cost of which could exceed \$50 million.

e. Alternatives and Financial Impact Analysis

Section 1003(d) requires a CPCN application to include “[a] cost analysis comparing the project with any feasible alternative sources of power. The corporation shall demonstrate the financial impact of the plant, line, or extension construction on the corporation’s ratepayers, stockholders, and on the cost of the corporation’s borrowed capital. The cost analyses shall be performed for the projected useful life of the plant, line, or extension, including dismantling or inactivation after the useful life of the plant, line, or extension.” Similarly, Rule 3.1(g) requires the Application to show “the financial ability of the applicant to render the proposed service together with information regarding the manner in which the applicant proposes to finance the cost of the proposed construction or extension.” The Application neither acknowledges these requirements nor provides the required information.

f. Design and Construction Management and Cost Control Plan

Section 1003(e) requires the CPCN application to include a plan “which indicates the contractual and working responsibilities and interrelationships between the corporation’s management and other major parties involved in the project. This plan shall also include a construction progress information system and specific cost controls.” The Application neither acknowledges this requirement nor provides the required information.

g. Proposed Rates

Rule 3.1(g) requires that the Application include “proposed rates to be charged for service to be rendered by means of such construction or extension.” The Application fails to propose any such rates, but rather requests that “the Commission authorize SCMC to enter into agreements for market-based, negotiated rates and terms and conditions with its customers for

²³ Application, p. 52.

electric supply and microgrid services” and authority to file the actual rates after issuance of the CPCN.²⁴ The failure to propose rates in the Application and the basis for those rates makes the Application legally deficient. Without proposed rates, it is not possible to ascertain whether the microutility would comply in a nondiscriminatory way with established rate design principles and requirements, including, for example, default time-of-use rates, rate protection for low-income and medical baseline customers, net metering, and demand response.

h. Local Jurisdiction Consent

Section 1004 states that an applicant for a CPCN must file evidence that it “has received the required consent, franchise, or permit of the proper county, city and county, city, or other public authority.” Additionally, Rule 3.1(d) requires the Application to identify “such health and safety permits as the appropriate public authorities have required or may require for the proposed construction or extension” of utility infrastructure. SCMC proposes to unlawfully defer providing this information until after the CPCN is granted.²⁵

i. Environmental Impact Review

The lack of project description and design information for the new utility infrastructure, as described above, means that a detailed project description cannot be developed to determine what environmental review may be required to be conducted under the California Environmental Quality Act (CEQA) and the Commission’s General Order 131-D.

j. Map of Service Area

Rule 3.1(c) requires that an application to construct utility facilities must include “[a] map of suitable scale showing the location or route of the proposed construction or extension, and its relation to other public utilities, corporations, persons, or entities with which the same is likely to compete.” The Application proposes to only provide such a map in each future filing

²⁴ Application, p. 42.

²⁵ *Id.*, p. 49 (“SCMC proposes to provide permitting and franchise information for each specific microgrid project [in a subsequent project-specific filing].”).

for a specific project.²⁶ The maps included with the Application are of “the locations of Investor Owned Utility and [Community Choice Aggregators],”²⁷ which do not meet the requirements of Rule 3.1(c).

2. Factual Grounds for Protest

Many of the legal issues listed above are combined issues of law and fact, and the Application fails to provide factual evidence to support a legal conclusion that the relief it requests should be granted. In general, the Application fails to set forth facts sufficient to reasonably conclude that the public convenience and necessity require, or will require, the proposed microutility infrastructure and its operation, as required by Rule 3.1(e). PG&E has identified facts that are likely to be in dispute in Section II.D.1 of this Protest.

C. Effect of the Application on PG&E and Its Customers

PG&E has a direct interest in the outcome of the Application for several reasons. First, the Application raises issues with regard to how the microutility will participate in statewide programs to meet critical state reliability and environmental goals. Negative impacts to statewide resource adequacy in particular could impact PG&E’s ability to serve its customers. Second, the microutility proposed by the Application may require interconnection with PG&E’s distribution and/or transmission infrastructure. PG&E has an interest in ensuring that any such interconnection is safe, reliable, and does not impair the ability of PG&E to meet its obligation to cost-effectively serve new or existing PG&E customers in proximity to the microutility. Third, any costs incurred by PG&E to serve, support, or interconnect with the microutility or its customers that cannot be recovered from that utility or its customers may be shifted to PG&E and/or its customers. Fourth, any failure or refusal by the microutility to serve its customers, or a desire of those customers to exit microutility service, may result in the need for PG&E to extend service to those customers. Fifth, any safety or reliability issues arising out of the actions or

²⁶ *Id.*, p. 58.

²⁷ Application, p. 58 and App. D.

equipment of an interconnected microutility may cause impacts outside of the microutility's service area, including to PG&E customers or PG&E equipment.

D. Request for Discovery, Testimony, and Evidentiary Hearing

To the extent that the Application is not dismissed, PG&E requests that the Commission preliminarily determine that hearings will likely be necessary to resolve material issues of disputed fact. PG&E also requests that intervening parties have adequate opportunity to conduct discovery regarding material issues of fact and to submit evidence, including written testimony, in order to provide a full record to support the Commission's deliberations and resolution of the Application.

1. Facts Likely to Be in Dispute

Based upon PG&E's initial review of the Application and in light of the scope of issues that PG&E has identified above, PG&E anticipates that the following facts are likely to be disputed if this proceeding continues:

- Whether granting of the CPCN will advance environmental justice²⁸ and equity-related public policy goals when compared to a scenario in which the CPCN is not granted.²⁹
- Whether granting the CPCN is likely to achieve a fully renewable microgrid and the utilization of only zero-carbon resources by 2045, consistent with Commission and State policies.
- Whether SCMC has a "proven track record"³⁰ of developing similar utilities and multi-customer microgrids.
- Whether granting the CPCN would strand investments by other entities or otherwise impact other utilities' current customer bases.³¹

²⁸ Application, pp. 2, 5.

²⁹ *Id.*, p. 4.

³⁰ *Id.*, p. 27.

³¹ *Id.*, p. 37.

- Whether granting the CPCN would “result in avoided costs” for existing utility ratepayers.³²
- Whether granting the CPCN would result in cost shifting.³³
- Whether SCMC’s customers would have “bargaining power concerning rates and terms and conditions of service.”³⁴
- Whether SCMC’s customers would have adequate information about their electricity rates prior to purchasing a home within the community served by SCMC.³⁵
- Whether SCMC’s business model and system design would result in materially improved reliability for new customers compared to a scenario in which the CPCN is not granted.³⁶

E. Proposed Categorization

SCMC proposes that this proceeding be categorized as ratesetting.³⁷ However, SCMC has not proposed rates or an objective mechanism to determine rates. Accordingly, the Application does not appear to meet the criteria established in Rule 1.3(g) for categorization as ratesetting. In contrast, any rulemaking or phase of a rulemaking³⁸ that considers the broad policy issues raised by the microutility business model proposed by SCMC – without approving a CPCN or rates for a specific utility – should be categorized as quasi-legislative, which is appropriate where the Commission is considering “policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the

³² *Id.*

³³ *Id.*

³⁴ *Id.*, p. 43.

³⁵ *See id.*, p. 44.

³⁶ *See id.*, pp. 7-8.

³⁷ *Id.*, p. 55.

³⁸ *See* Commission Rule 7.1(e)(1) (allowing phases of proceedings to be categorized differently).

Commission investigates rates or practices for an entire regulated industry or class of entities within the industry, even if those proceedings have an incidental effect on ratepayer costs.”³⁹

F. Proposed Schedule

SCMC has proposed alternative schedules for the proceeding with and without evidentiary hearings.⁴⁰ To the extent that the Application is not dismissed, PG&E’s comments in Section II.D of this Protest explain why adequate time for discovery, potential intervenor testimony, and hearings are needed. Accordingly, PG&E requests that any schedule established in this proceeding include those items, as shown in the following edits (shown in bold) to SCMC’s proposed schedule:

Event	Date
Application Filed	September 1, 2022
Protests Due	October 7, 2022 (30 days after the Application appeared in the Daily Calendar)
Reply to Protests	10 days after Protests are due
Prehearing Conference	50 days after Application filed
Scoping Memo / Ruling on Dismissal ⁴¹	65 days after Application filed
Initial Discovery on Material Issues of Fact	Beginning after Issuance of Scoping Memo
SCMC’s Supplemental Testimony Curing Deficiencies	60 days after Scoping Memo Issues
Intervenor Testimony Served	60 days after SCMC’s Supplemental Testimony Served
SCMC and Intervenor Rebuttal Testimony Served	30 days after Intervenor Testimony Served
All-Party Meet and Confer (Rule 13.9)	No later than 10 calendar days after the submission of Rebuttal Testimony
Motion for Evidentiary Hearings, If Any	15 days after Rebuttal Testimony Served
Evidentiary Hearings	Scheduled according to Commission Availability

³⁹ Commission Rule 1.3(f).

⁴⁰ Application, pp. 56-57.

⁴¹ The remainder of this schedule assumes, *arguendo*, that the Application is not summarily dismissed due to the deficiencies noted above.

Event	Date
Opening Briefs	30 days after conclusion of Hearings
Reply Briefs	30 days after filing of Opening Briefs
Proposed Decision	Pursuant to the Commission’s Rules
Opening Comments on the Proposed Decision	20 days after issuance of the Proposed Decision
Reply Comments on the Proposed Decision	5 days after filing of the Opening Comments
Final Decision	Next scheduled Commission meeting

III. CONCLUSION

SCMC’s innovative Application raises critically important policy, factual, and legal issues that are not directly addressed by SCMC. Whether the business model proposed by SCMC could equitably support or would alternatively hinder the transformation of the energy sector in California in line with customers’ desires and State policy depends on the resolution of these issues. To the extent the Commission wishes to address these issues on a class-wide basis, they should be scoped into an appropriate rulemaking, such as the Microgrid and Resiliency OIR. However, the Application as filed is legally deficient and should be dismissed without prejudice to refiling with the required infrastructure-, customer-, and rate-specific details.

Respectfully Submitted,
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