

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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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

PUBLIC ADVOCATES OFFICE'S MOTION TO DISMISS

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I. INTRODUCTION

Pursuant to Rules 11.1 and 11.2 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure (Rules), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) files and serves this motion to dismiss 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).

The Application of Sunnova Community Microgrids California, LLC (SCMC) requests that the Commission issue a Certificate of Public Convenience and Necessity (CPCN) with a virtually statewide service territory for community based microgrids. The Application proposes that SCMC would operate under drastically limited regulations and waived rules, including those pertaining to important consumer and ratepayer protections.¹ SCMC’s requests are based on unsubstantiated claims and lack the basic information that Public Utilities Code Section 1003² and Rule 3.1 require for the issuance of a CPCN.³ Relying on an interpretation that the Commission already considered and

¹ See Application at 42 (privately negotiated rates and terms and conditions), 54 (waiver of affiliate transaction rules).

² Unless otherwise stated, all references to Section are to the Public Utilities Code.

³ See Application at 16-17.

rejected in Rulemaking (R.) 19-09-009, *Order Instituting Rulemaking Regarding Microgrids Pursuant to Senate Bill 1339* (Rulemaking),⁴ SCMC asserts that the Commission can issue a CPCN and approve SCMC's high-level business concept based on the microutility statute,⁵ Section 2780.

The Commission should dismiss SCMC's Application. Such a dismissal would allow the Commission to continue its consideration of community microgrid issues and other topics required to advance the facilitation of microgrids in the Rulemaking. Addressing these issues in the Rulemaking would also allow the Commission to make policy decisions based on sufficient information, participation, and consideration of legal issues and scenarios applicable to a wide range of microgrids.

II. SUMMARY AND BACKGROUND

The Commission and a wide spectrum of stakeholders are diligently working in the Rulemaking to facilitate the commercialization of microgrids.⁶ Decision (D.) 21-01-018, issued in the Rulemaking, explains that microgrid rules, regulations, and policies must uphold the Commission's duties to ensure public safety, reliability, and the reasonableness of rates.⁷ The Commission's approach in the Rulemaking simultaneously upholds these duties and significantly advances microgrid development, resiliency, decarbonization, and equity.⁸ For example, the Commission will soon establish a multi-

⁴ Decision (D.) 21-01-018, *Decision Adopting Rates, Tariffs, and Rules Facilitating the Commercialization of Microgrids Pursuant to Senate Bill 1339 and Resiliency Strategies* (issued in the Rulemaking) at 33.

⁵ See Application at 55.

⁶ See D.21-01-018, at 2-3 (summary of revisions to tariff rules, directions to develop new microgrid tariff and Microgrid Incentive Program, creation of working groups), 46-54 (context, rules, and policies) 63-64 (microgrid goals), 97-98 (comments on proposed decision); see also *id.*, at 7-8 (listing 51 parties that submitted comments to a proposal).

⁷ D.21-01-018 at 97-98, 106-107 (citing Pub. Util. Code Sections 218, 451, and 454.51); see also Pub. Util. Code. Sections 321.1(a), 591, 750, 961, 963, and 8371(d).

⁸ D.21-01-018 at 60 (noting duty to balance various statutory obligations under Pub. Util. Code Sections 451, 454.51, and Section 8371); see also *id.*, at 63-64, 97-98.

customer microgrid tariff⁹ and consider a statewide Microgrid Incentive Program pursuant to its directions in D.21-01-018.¹⁰ Further, parties and the Commission will develop a record in Track 3 of the Rulemaking to establish a clear understanding about the different types of microgrids that parties expect to benefit from Commission policymaking.¹¹

These examples of recent progress in the Rulemaking show that the Commission’s approach to establish well-planned and comprehensive regulations is not a barrier to microgrid development. To the contrary, the Commission’s meticulous analysis and organized scoping in the context of the Rulemaking are necessary to avoid unintended consequences that may result from “a great many” potential legal and policy conflicts.¹² The Rulemaking’s analytical and fact-based approach is also necessary to weed out unsupported claims and self-interested proposals that ignore the Commission’s duties. As the Commission lamented, “some parties think there is another ‘gold rush’ underway in California” in the microgrid area.¹³ These prospector parties ask the Commission to place their own interests above the Commission’s constitutional mandates, statutory requirements, and continuity of service policies for tariffs, rates, and rules.¹⁴

In rejecting proposals that fail to sufficiently heed the Commission’s duties, the Commission explained that the record must be further developed before the Commission can define specific types of microgrids or reach decisions as to the complex policy, legal and evidentiary questions raised by requests to eliminate or limit rules and tariffs

⁹ See, e.g., Rulemaking, *Assigned Commissioner’s Amended Scoping Memo and Ruling Resetting Track 4*, December 17, 2021 (Track 4 Scoping Memo) at 6-7 (including “Microgrid Multi-Property Tariff” and related issues in scope).

¹⁰ See D.21-01-018 at 59; 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)*, December 3, 2021 (filed in the Rulemaking).

¹¹ D.21-01-018 at 54.

¹² D.21-01-018 at 54, 98.

¹³ D.21-01-018 at 46 (citing MRC, The Climate Center, Clean Coalition, 350 Bay Area, GPI, VSCC, and CEDMC, *Motion for a Comprehensive Microgrid Tariff Development Process* filed October 1, 2020). Notably, these same parties support SCMC’s Application

¹⁴ D.21-01-018 at 46.

applicable to electrical corporations.¹⁵ The Commission also specifically considered and rejected proposals to rely on the microutility statute, Section 2780, to circumvent regulations applicable to electrical corporations.¹⁶

Now, SCMC's Application requests authorization for its conceptual business model to develop microgrids as a microutility to circumvent vital regulations applicable to electrical corporations.¹⁷ SCMC proposes to own and operate large multi-customer microgrids¹⁸ in any California county¹⁹ and to sell power through private contracts at rates, terms, and conditions negotiated privately with customers²⁰ without Commission tariffs, hearings, or other rules applicable to electrical corporations.²¹ To waive such regulations, SCMC asserts that the Commission should rely on the Section 2780 microutility statute,²² a proposal that the Commission rejected in D.21-01-018.²³ Like so many proposals rejected by the Commission, SCMC's Application asks the Commission to ignore statutory duties for the benefit of SCMC's interests and to pre-determine issues scoped for determination in the Rulemaking, but in the absence of an adequate record.

SCMC further asserts that its proposal will advance resiliency, decarbonization, equity, and a sustainable microgrid business model.²⁴ Just as parties in Track 2 of the Rulemaking failed to substantiate their claims that microgrids provide value to non-

¹⁵ D.21-01-018 at 54, 97-99.

¹⁶ D.21-01-018 at 33.

¹⁷ See, e.g., Application at 42-45 (no review of rates), 51-55 (minimal reporting and request to waive rules).

¹⁸ Application at 3.

¹⁹ Application at 57.

²⁰ 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.")

²¹ 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.

²² Application at 55.

²³ D.21-01-018 at 33.

²⁴ See, e.g., Application at 27-28.

microgrid customers,²⁵ SCMC fails to provide information required by Section 1003 and Rule 3.1 to substantiate its claims that its microgrid model will provide any benefits to its own customers or the larger grid. Since SCMC's Application provides only a high-level conceptual proposal, SCMC states that such statutorily required information will not be provided in this proceeding.²⁶

Accordingly, the Commission should dismiss SCMC's Application and continue to develop microgrid policy in the Rulemaking. Developing microgrid policy in the Rulemaking allows the Commission to build the necessary record with participation from a diverse range of parties, as it considers issues in the context of upholding important statutory obligations, recognizes a broad range of microgrids, and weeds out unsubstantiated proposals that serve the self-interest of project proponents yet provide no benefits to the grid as a whole.

III. DISCUSSION

A. The Commission should not consider SCMC's Application before a regulatory framework for multi-customer microgrids is developed in the Rulemaking.

1. The Commission should address microgrid issues in the Rulemaking.

SCMC requests authorization to develop multi-customer microgrids to sell power through private contracts with market-based rates, terms, and conditions negotiated with its customers.²⁷ Resolving SCMC's Application would require the Commission to determine the appropriate level of regulation for SCMC's proposed multi-customer

²⁵ Decision at 47-48.

²⁶ Application at 16-17 ("The process will begin with collecting information about the proposed residential development to create a project-specific model to determine whether the residential development is likely to be a good candidate for a community microgrid from a cost-benefit perspective.")

²⁷ 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.")

microgrids, a process that is currently underway in the Rulemaking.²⁸ Since this regulatory framework for microgrids has not been developed yet in the Rulemaking, the Commission should not predetermine the reasonableness of the level of regulatory oversight necessary for microgrids – especially on the virtually state-wide scale proposed by SCMC.²⁹

Instead, the Commission should continue to develop the microgrid regulatory framework in the Rulemaking. There are many regulatory issues related to multi-customer microgrids that the Commission must address before determining whether SCMC’s proposal is reasonable. For example:

- How the costs of existing infrastructure should be shared between the microgrid customers and the ratepayers outside the microgrid, if microgrid customers are interconnected to existing infrastructure.³⁰
- Whether an existing utility would be expected to act as the Provider of Last Resort for microgrid customers.
- Appropriate customer protections, including rate regulation, disconnection issues and safety standards.

Developing the microgrid regulatory framework in the Rulemaking, rather than in the context of the Application, would provide important advantages. Microgrids can be diverse in terms of size, location and type of resources involved. Considering these matters in the context of the Rulemaking would allow the Commission to develop a framework that works across a range of types of microgrids, not just the microgrids identified in the SCMC Application. In addition, developing a regulatory framework for multi-customer microgrids the Commission should facilitate comments from as large a body of stakeholders as possible to draw on diverse perspectives as to how microgrids

²⁸ See, e.g., R.19-09-009, *Assigned Commissioner’s Amended Scoping Memo and Ruling Resetting Track 4*, Dec. 17, 2021 (Track 4 Scoping Memo) at 6-7 (including “Microgrid Multi-Property Tariff” and related issues in scope).

²⁹ Application at 57.

³⁰ Application at 10, 14, 16 (discussing interconnection with transmission infrastructure).

could work best for its customers. This would be more difficult if the regulatory framework is developed in the SCMC Application as opposed to the Rulemaking, and it may deprive parties to the Rulemaking of the opportunity to comment on key regulatory issues.

In other contexts, the Commission has developed regulatory standards through rulemakings. For example, regulatory standards for both Community Choice Aggregations (CCAs) and Electric Service Providers (ESPs) were developed through dedicated rulemakings that allowed for ample stakeholder discussion and comment on the issues of cost sharing, consumer protection, and the statutory obligations of such entities.³¹ ³²

Since regulations have not yet been developed in the Rulemaking, the Commission should not predetermine the reasonableness of regulatory oversight for microgrids on the large scale proposed by SCMC.³³ Any decision as to SCMC's microgrid proposals will set a precedent for the microgrid framework at issue in the Rulemaking or lead to conflicting decisions. Therefore, the Application should be dismissed so that the Commission can more efficiently and effectively facilitate microgrid development in the Rulemaking.

2. In the Rulemaking, the Commission already rejected the same proposal to rely on the microutility statute that SCMC proposes here.

SCMC requests that the Commission classify it as a microutility under Section 2780,³⁴ because SCMC asserts that this provides a pathway for microgrid regulation.³⁵

³¹ R.03-10-003, *Order Instituting Rulemaking to Implement Portions of AB 117 Concerning Community Choice Aggregation*. Filed October 2, 2003.

³² R.94-04-031, *Order Instituting Rulemaking on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation*. Filed April 20, 1994.

³³ See, e.g., D.04-01-050, *In Re Establish Pol'ys & Cost Recovery Mechanisms for Generation Procurement & Renewable Res. Dev.*, 231 P.U.R.4th 165 (Jan. 22, 2004) ("we will not predetermine the outcome of these issues in advance of the rulemaking").

³⁴ Application at 51-52.

³⁵ Application at 3.

This is at issue in the Rulemaking, as demonstrated by the fact that SCMC’s Application cites to Commission Staff materials from the Rulemaking, which suggest that Section 2780 be explored as a potential pathway for microgrid regulation.³⁶

However, the Application fails to acknowledge that the Commission subsequently considered and rejected proposals to rely on the Section 2780 microutility statute for multi-customer microgrids in Decision (D.) 21-01-018, issued in the Rulemaking.³⁷ The Commission determined that entities cannot rely on Section 2780 to sell power under private contractual arrangements yet be exempt from utility regulations in the microgrid context.³⁸ D.21-01-018 specifically concludes that “we reject the assertion that under Section 2780, we can exempt ‘microuilities’ from the requirements applicable to electrical corporations.”³⁹

Contrary to the Commission’s determination in D.21-01-018, SCMC asserts that the Commission should rely on Section 2780 to allow SCMC to sell power under private contractual arrangements to third parties on nearby properties and be exempt from statutes and regulations applicable to electrical corporations.⁴⁰ Therefore, SCMC’s Application directly conflicts with D.21-01-018 and should be dismissed. SCMC’s request to revisit this issue in this Application, rather than file a Petition for Modification in the Rulemaking, deprives parties in the Rulemaking of the opportunity to respond in the Rulemaking context.⁴¹

³⁶ Application at 3.

³⁷ D.21-01-018 at 31-33.

³⁸ D.21-01-018 at 31-32 (the Commission rejected the push to sell power under contractual arrangements without Commission oversight “without regard to the existing regulatory and legislative requirements that are reflected in Section 218 and other parts of the Public Utilities Code.”)

³⁹ D.21-01-018 at 33.

⁴⁰ 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.”)

⁴¹ Rule 16.

B. SCMC’s proposal does not meet the statutory 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.”⁴² SCMC’s proposed microutility model appears inconsistent with Section 2780. First, SCMC’s proposal appears to exceed the 2,000-customer limit. Although SCMC proposes to serve communities of 500 to 2,000 customers, SCMC requests authorization to serve *multiple* communities of that size.⁴³ This means SCMC plans to provide electricity to a customer base of greater than 2,000 customers.

Second, SCMC proposes to sell electricity to entities other than its customer base. Specifically, SCMC proposes to sell electricity to adjacent utilities or the California Independent System Operator (CAISO) markets.⁴⁴ Accordingly, SCMC’s proposal does not comply with Section 2780’s requirement that a microutility sell electricity “exclusively” to its customer base of fewer than 2,000 customers.⁴⁵

Finally, the “sole-source generation” requirement in Section 2780 appears to conflict with SCMC’s plans to interconnect through the CAISO Wholesale Distribution Access Tariff to buy and sell energy in the wholesale energy market. The structure of the sole microutility that has existed in the state, Mountain Utility in Kirkwood, California, substantiates the plain language interpretation of “sole-source,” as it was not interconnected to the transmission, natural gas, or diesel pipeline systems and generated all energy needed to serve its customers’ load on-site.⁴⁶

⁴² Section 2780.

⁴³ Application at 3.

⁴⁴ Application at 9 (“Excess solar generation and battery power not used by the home will flow to the community microgrid under SCMC’s control, which SCMC will then distribute to serve other loads in the community or, when there is excess generation, store onsite or provide to adjacent utilities or the CAISO market.”)

⁴⁵ Section 2780.

⁴⁶ D.11-06-032, *Decision Approving the Sale and Transfer of Control of Assets and Reliving Mountain* (continued on next page)

Since SCMC's proposal does not meet the Section 2780 definition of a microutility, the Commission should dismiss the Application.

C. SCMC fails to meet its burden to demonstrate that its proposals will ensure that rates are just, reasonable, and necessary.

As the applicant, it is SCMC's burden to demonstrate that its proposals are just and reasonable.⁴⁷ Here, SCMC describes general characteristics of microgrids, but states that it plans to evaluate potential sites and design microgrid models based on additional cost-benefit information that SCMC will collect after a decision on its Application.⁴⁸ SCMC states that each microgrid will have different rates, terms, and conditions of service, based on the specifics of each community.⁴⁹ This means that SCMC will not provide rate and cost-benefit information necessary for the Commission to determine in this Application whether the proposed projects are just, reasonable, and necessary. SCMC proposes that SCMC, not the Commission, decide whether projects and rates are just, reasonable, and necessary.⁵⁰ As such, SCMC fails to meet its burden to provide information to justify its proposals.

D. SCMC fails to meet its burden to demonstrate that its microgrid proposal will ensure public safety.

SCMC's request for authorization to self-regulate safety issues is similarly unjustified.⁵¹ The Commission has a mandate to ensure that utilities place safety as the

Utilities of its Obligation to Provide Public Electric Utility Service. Filed in A.11-02-020, June 11, 2011. pp. 4-5. Available at https://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/138399.PDF

⁴⁷ *In Re Energy Cost Adjustment Clauses* (1980) 4 Cal.P.U.C.2d 693, at *6 (burden of proof is on the utility applicant to establish reasonableness).

⁴⁸ Application at 16-17 ("The process will begin with collecting information about the proposed residential development to create a project-specific model to determine whether the residential development is likely to be a good candidate for a community microgrid from a cost-benefit perspective.")

⁴⁹ Application at 42.

⁵⁰ Application at 16-17.

⁵¹ Application at 21.

top priority.⁵² However, SCMC fails to explain how its proposed safety and maintenance operations would include Commission oversight, accountability, or enforcement mechanisms.⁵³ SCMC also fails to demonstrate that private negotiation with customers,⁵⁴ which SCMC proposes in lieu of regulation, renders Commission regulation unnecessary to oversee the safety of the service that SCMC provides. SCMC's promises to implement its enterprise asset management system on its own, subject to SCMC's own discretion,⁵⁵ are insufficient on their own to ensure public safety. Accordingly, SCMC fails to demonstrate that its proposal will allow the Commission to fulfill its obligation to ensure that SCMC's infrastructure will meet all relevant electrical, operational, and safety standards.

E. SCMC fails to provide information required by Section 1003 and Rule 3.1.

To apply for a CPCN, SCMC must provide the information required by Section 1003⁵⁶ and Rule 3.1.⁵⁷ SCMC concedes that it does not provide required information such as cost, rate, design, and plan information.⁵⁸ Instead, SCMC asserts that the Commission should use its discretion under the “just and reasonable” standard of Section 451 to grant SCMC's Application.⁵⁹ SCMC misinterprets the applicable standards. Cost,

⁵² D.19-04-020, *Phase Two Decision Adopting Risk Spending Accountability Report Requirements and Safety Performance Metrics for Investor-Owned Utilities and Adopting a Safety Model Approach for Small and Multi-Jurisdictional Utilities* (May 6, 2019), pp. 10-11, 27 (citing Sections 321.1(a), 591, 750, 961, 963); see also Section 8371(d).

⁵³ Application at 21-25.

⁵⁴ Application at 42 (“Unlike existing customers of a utility, SCMC's customers will affirmatively exercise the choice of whether to live in a microgrid community and sign up for the rates and terms and conditions of service offered by SCMC.”)

⁵⁵ Application at 21.

⁵⁶ Section 1003 (requiring a CPCN applicant to provide engineering and design information, an implementation plan, cost estimates, and cost control plans).

⁵⁷ Rule 3.1 (“Applications, under Section 1001 of the Public Utilities Code, to construct or extend facilities *shall* contain the following information”) (Emphasis added); see also Rule 2.1(d) (applicant must provide “additional information as may be required by the Commission in a particular proceeding.”)

⁵⁸ Application at 17, 42, 51.

⁵⁹ Application at 42.

rate, scope, design, and location information required by Section 1003 and Rule 3.1 are all material to whether the Application satisfies Sections 451 and 1001.⁶⁰ As such, it is SCMC's burden to justify its requests with the information required by Section 1003 and Rule 3.1 in the Application.⁶¹

SCMC proposes to provide required information after a decision in this proceeding.⁶² Further, SCMC proposes to report information outside of any proceeding for Commission Staff to "review," not for the Commission to analyze in connection with a decision.⁶³ As such, SCMC's proposal is contrary to Section 1003 and Rule 3.1, which require that this information be provided in an application.⁶⁴ If SCMC provides information after a decision, as SCMC proposes, the Commission and other parties will not have adequate information to evaluate the reasonableness and necessity of SCMC's Application. The information necessary to justify a CPCN will not be in the record for the Commission to consider when it determines whether SCMC's Application is just and reasonable and provides a basis for a CPCN. The fact that SCMC requests broad authorization for as-yet-undeveloped projects does not excuse SCMC from its obligation to provide information necessary to demonstrate that its requests are reasonable.

SCMC's failure to provide required information means that the Commission and parties lack a sufficient basis to analyze several important issues that would be in the scope of this proceeding if it is not dismissed, such as:

⁶⁰ Compare Rule 3.1 with Section 451 (Utility must demonstrate that it will provide and maintain "adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities . . . as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."); see also Section 1001.

⁶¹ *In Re Energy Cost Adjustment Clauses* (1980) 4 Cal.P.U.C.2d 693, at *6 (burden of proof is on the utility applicant to establish reasonableness).

⁶² Application at 51 ("SCMC provides below a proposed process for identifying the specific plans and equipment for each microgrid community to the CPUC, either through an advisory letter process or through another mechanism. For each microgrid community, SCMC proposes to file the following with Commission staff for review.")

⁶³ Application at 51.

⁶⁴ See Section 1003 and Rule 3.1.

- Whether SCMC’s proposed microgrids are more cost effective and provide better reliability benefits than alternative options.⁶⁵
- Whether SCMC provides a “full description of the proposed construction or extension, and the manner in which the same will be constructed.” (Rule 3.1(a).)
- Whether SCMC provides “names and addresses of all utilities, corporations, persons or other entities, whether publicly or privately operated, with which the proposed construction is likely to compete.” (Rule 3.1(b).)
- Whether SCMC provides 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. (Rule 3.1(c).)
- Whether SCMC’s statements that it will comply with franchise laws and adhere to safety and permitting requirements are sufficient, in the abstract, to satisfy the requirement that SCMC identify franchise and health and safety permits.⁶⁶ (Rule 3.1(d).)
- Whether SCMC provides “facts” – as opposed to conceptual ideas – to show that “public convenience and necessity require, or will require, the proposed construction or extension, and its operation.” (Rule 3.1(e).)
- Whether SCMC satisfies the requirement that “the applicant shall file as a part of the application supporting statements or exhibits showing that the proposed construction is in the public interest and whether it is economically feasible.” (Rule 3.1(f).) Here, SCMC does not attempt to demonstrate economic feasibility or propose specific construction.
- Whether SCMC provides “[s]tatements or exhibits showing the financial ability of the applicant to render the proposed service together with information regarding the manner in which the

⁶⁵ See, e.g., D.21-01-018 at Appendix A, Section II (requiring utilities to provide comparative analysis of alternatives).

⁶⁶ Rule 3.1 (“Applications, under Section 1001 of the Public Utilities Code, to construct or extend facilities *shall* contain the following information”) (emphasis added).

applicant proposes to finance the cost of the proposed construction or extension.” (Rule 3.1(g).)

- Whether SCMC provides a “statement of the proposed rates to be charged for service to be rendered by means of such construction or extension.” (Rule 3.1(h).)
- Whether SCMC provides the data and information required by Rule 3.1(l), including load, capacity, and capital and operating costs.
- Whether SCMC provides “[s]uch additional information and data as may be necessary to a full understanding of the situation.” (Rule 3.1(o).)

Here, SCMC’s first-of-its kind Application requires more, not less, information and data necessary for the Commission to have a full understanding of the situation. SCMC’s proposals to provide information after a decision on its Application and outside of any proceeding raise concerns for every category of information required for the Commission to evaluate SCMC’s request for a CPCN.

F. SCMC fails to satisfy the requirements of Section 1001.

The Application should be dismissed because it does not include the information needed to satisfy the requirements of Section 1001 for a CPCN. As discussed above, SCMC fails to justify its requests for broad authorization to generate and sell power through private contracts, operate in a virtually statewide service territory, and develop its novel approach to microgrid implementation.

G. SCMC’s Application does not provide information necessary to address technical and engineering issues.

SCMC’s Application should be dismissed because the lack of a microgrid regulatory framework and SCMC’s failure to provide information, as discussed above, raises technical and engineering questions too numerous to address without additional information, such as:

- The level of engineering specificity necessary to demonstrate reliability.

- How SCMC’s proposed microgrid assures safe operation in both isolated and interconnected modes.
- Specific expected demand cycles, including peak demand level and low demand levels.
- How the microgrid operator will ensure the generation will meet demand in the microgrid area.
- How often the microgrid is expected to rely on fossil fuel generation.
- Metrics to determine the point at which the microgrid will be a net demand or resource, and estimated timelines.
- Identification of the utility the microgrid will interconnect to and how SCMC’s microgrid will coordinate and communicate its microgrid operations with the utility and vice versa.
- Timelines for construction and operation.
- The process the microgrid will use to transition between interconnected and isolated operations.
- How SCMC proposes to sustain an acceptable frequency when operating independently.

H. SCMC’s proposal to waive Affiliate Transaction Rules (ATRs) is unreasonable.

With their control of public utilities, parent holding companies can require unreasonable fees from their utility subsidiaries, preferential treatment for their affiliates, or otherwise affect adversely the accounting practices and the rate and dividend policies of the utility subsidiaries.⁶⁷ As a result, ATRs are critical to ensuring that utilities meet their public service obligations at the lowest reasonable cost and that the utilities do not favor or engage in preferential treatment of their affiliates.⁶⁸ Here, SCMC’s request to

⁶⁷ R.05-10-030, *Order Instituting Rulemaking Concerning Relationship Between California Energy Utilities and their Holding Companies and Non-Regulated Affiliates*, Oct. 31, 2005 (2005 ATR OIR) at 3.

⁶⁸ 2005 ATR OIR at 3-4; see also D.97-12-088 *Opinion Adopting Standards of Conduct Governing Relationships Between Utilities and their Affiliates*.

waive ATRs⁶⁹ would leave its customers at risk of the consequences ATRs are intended to prevent. SCMC requests that the Commission waive ATRs to allow SCMC to transact with its “non-utility business” parent company, SEI.⁷⁰ Inherently, this places SCMC’s customers at risk that SCMC could favor its own sales or sales from its unregulated parent company, SEI.⁷¹ In addition, SCMC’s requested exemptions from ATRs would set an unacceptable precedent for microutilities. SCMC’s unsupported assertions and refusal to provide required information are insufficient to eliminate or limit the applicability of such ATRs and SCMC’s Application should be dismissed.

I. SCMC’s Application raises numerous statutory and regulatory issues.

As discussed above, SCMC’s proposal should be considered in the Rulemaking because it raises numerous statutory and regulatory issues. SCMC’s Application provides only a broad and preliminary description of its proposals.⁷² Yet, it is already clear that the Commission will have to consider important, complicated, and far-reaching issues if the Commission chooses to allow SCMC’s Application to continue.

Potential federal jurisdiction is another important issue that arises from SCMC’s request for approval of a microgrid model that may procure from and sell directly in the wholesale CAISO markets.⁷³ That request requires the Commission to consider the potential intersection of federal and state regulations and jurisdiction as they relate to microgrids and access to the wholesale markets. Despite SCMC’s request for approval of a microgrid model that relies on the wholesale markets, the Application never mentions

⁶⁹ Application at 52-55.

⁷⁰ Application at 54.

⁷¹ See, e.g., *Cal. Independent System Operator Corp. v. FERC* (2004) 372 F.3d 395, 396 (utilities owning or controlling transmission or distribution facilities enjoy a natural monopoly, which they can exploit to favor their own sales or sales from their unregulated affiliates and exclude or burden their competitors)

⁷² Application at 16 (“The process will begin with collecting information about the proposed residential development to create a project-specific model . . .”)

⁷³ Application at 10.

Federal Energy Regulatory Commission (FERC) regulations.⁷⁴ SCMC does not address whether FERC regulations may preempt California regulations as to certain activities, or whether preemption could prevent the Commission from upholding its obligations to protect ratepayers and the public.⁷⁵

Another important issue arises from SCMC's request for a virtually state-wide service territory.⁷⁶ The Commission will need to determine whether CPCNs for microgrid developers should be untethered to any location or territory, as SCMC requests, or bear some relation to potential microgrid locations.

SCMC's request for approval to operate its microgrid model as a microutility also raises questions as to which statutes and regulations that are normally applicable to electrical corporations should also apply to microuilities. The microutility statute has never been applied in the microgrid context in California. Based on SCMC's preliminary description, it is already clear that the Application raises issues concerning:

- Participation in the Integrated Resource Proceeding, R.16-02-007;
- Renewable Portfolio Standards;
- Requirements to maintain opt-out provisions for participating customers; and
- Cost-sharing mechanisms like the Power Charge Indifference Adjustment.

Rather than address these issues in the context of SCMC's Application, the Commission should define and develop regulations for microuilities in a rulemaking before it considers whether it is reasonable to classify SCMC as a microutility.

⁷⁴ See generally, Application.

⁷⁵ See, e.g., Sections 321.1(a), 451, 591, 750, 961, and 963.

⁷⁶ Application at 57.

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 also require Commission address those issues without the information statutorily required for a CPCN application. Therefore, the Commission should dismiss SCMC's Application.

Respectfully submitted,

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