



**FILED**

10/23/23

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R1909009

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

Order Instituting Rulemaking  
Regarding Microgrids Pursuant to  
Senate Bill 1339 and Resiliency  
Strategies.

Rulemaking 19-09-009

**ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S  
RULING DENYING JOINT PARTIES' MOTION TO AMEND  
SCOPING MEMO AND RULING FOR TRACK 5,  
AND MODIFYING TRACK 5 SCHEDULE OF ACTIVITIES**

**Summary**

This ruling denies the October 6, 2023 motion filed jointly by Green Power Institute, Center for Biological Diversity, The Climate Center, and Microgrid Resources Coalition (Joint Parties) to amend the Assigned Commissioner's Scoping Memo and Ruling for Track 5. This ruling modifies the Track 5 schedule of activities for this proceeding.

**1. Background**

On September 12, 2019, the California Public Utilities Commission (Commission) initiated Rulemaking (R.) 19-09-009 to develop a framework for facilitating the commercialization of microgrids pursuant to Senate Bill 1339. Five tracks have been initiated in R.19-09-009.

Most recently, on July 18, 2023, the Assigned Commissioner issued the Assigned Commissioner's Scoping Memo and Ruling for Track 5 pursuant to Public Utilities (Pub. Util.) Code Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure (Rules).

## **2. The Motion**

On October 6, 2023, pursuant to Rule 11.1 of the Commission's Rules, Joint Parties filed a motion requesting to amend the July 18, 2023 Assigned Commissioner's Scoping Memo and Ruling for Track 5 of this rulemaking.

Joint Parties make an array of arguments in support of their motion. Their arguments can be summarized as follows: (1) Track 5 eliminates the opportunity for party tariff submissions, public discussion, and formal comments on stakeholder proposals;<sup>1</sup> (2) Track 5 eliminates public discussion and formal comments on guiding principles to adopt for the development of a microgrid multi-property tariff;<sup>2</sup> (3) Track 5 pre-emptively and unjustifiably designates the Community Microgrid Enablement Tariff as the basis for the investor-owned utility (IOU) tariff proposal;<sup>3</sup> and (4) asks for evidentiary hearing.<sup>4</sup> Their motion makes several requests for changes to the scope, schedule, and need for hearing of Track 5 to R.19-09-009.

On October 17, 2023, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) (collectively, Joint IOUs) filed a response to the motion of the Joint Parties to amend Track 5. In their response, the Joint IOUs argue: (1) the Scoping Memo and Ruling provides substantial opportunity for comment by parties, including alternative proposals;<sup>5</sup> (2) the Scoping Memo and Ruling provides an efficient way to analyze and compare proposed multi-property

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<sup>1</sup> Joint Parties Motion at 4-6.

<sup>2</sup> *Id.* at 6.

<sup>3</sup> *Id.* at 7-8.

<sup>4</sup> *Id.* at 8.

<sup>5</sup> Joint IOUs Response at 2-3.

microgrid-tariffs;<sup>6</sup> (3) the Scoping Memo and Ruling does not conflict with Pub. Util. Code Section 1705.1;<sup>7</sup> and (4) the Joint Parties' criticisms of PG&E's Community Microgrid Enablement Tariff are premature given the complexity of community microgrid projects.<sup>8</sup>

### **3. Discussion**

The Pub. Util. Code grants the assigned Commissioner the authority to set forth the issues to be addressed, to determine the need for hearing, to set the proceeding schedule, to set the category of the proceeding, and to identify other matters to a proceeding<sup>9</sup> in her scoping memo and ruling.

Here, the July 18, 2023, Assigned Commissioner's Scoping Memo and Ruling for Track 5 set forth the issues to be addressed, the need for hearing, the schedule, and the category for Track 5 of this proceeding. The Assigned Commissioner's Scoping Memo and Ruling for Track 5 directed the Joint IOUs to submit a draft pro-forma standard microgrid multi-property tariff into the record of this proceeding for public comment and debate. The Assigned Commissioner's Scoping Memo and Ruling for Track 5 also directs parties to file opening and reply comments in response to the Joint IOUs' draft microgrid multi-property tariff for public record development.

Next, the Assigned Commissioner's Scoping Memo and Ruling for Track 5 directs the Commission's Energy Division to issue a Staff Proposal on a draft microgrid multi-property tariff. The Assigned Commissioner's Scoping Memo and Ruling also directs the Energy Division to host a public workshop on the

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<sup>6</sup> *Id.* at 3-4.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> Pub. Util. Code § 1701.1 and Article 7 of the Commission's Rules.

tariff proposals so that stakeholders could participate in the development of a statewide, microgrid multi-property tariff. Stakeholders of this proceeding have ample opportunities to participate and be heard before the Commission on the issues set forth in Track 5 of this proceeding.

In short, this proceeding is scheduled to take multiple rounds of public comment as well as conduct a public workshop on the scoped issues in this proceeding prior to the Commission issuing a decision on the matters of Track 5. This record indicates stakeholders to this proceeding and members of the public have ample opportunities to participate and be heard before the Commission on the issues set forth in Track 5 of this proceeding. The Commission has clearly stated its intent for robust stakeholder participation in Track 5 of this proceeding.

To be sure, due process requires notice and an opportunity to be heard. The Commission has applied<sup>10</sup> the standard for due process notice articulated by the United States Supreme Court in *Mullane v. Central Hanover Bank & Trust Co*:

An elementary and fundamental requirement of due process . . . is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. [Citation omitted.] The notice must be of such nature as reasonably to convey the required information, [citation omitted], and must afford a reasonable time for those interested to make their appearance. . . . Order Modifying D.01-09-060 and Denying Rehearing 2001 Cal. PUC LEXIS 1196 (October 10, 2001).

It is also well settled that the type of notice required is dictated by the circumstances.<sup>11</sup> Under these standards, the Commission has afforded Joint

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<sup>10</sup> Resolution ALJ-288, April 18, 2013, 2013 Cal. PUC LEXIS 214, \*9-10 (citing *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314).

<sup>11</sup> *Id.*

Parties and other stakeholders ample notice, opportunity to participate, and opportunity to formally comment on the draft Joint IOU microgrid multi-property tariff submission as well as to the Energy Division Staff Proposal and public workshop.

We encourage Joint Parties and all stakeholders to this proceeding to participate in the schedule of activities set forth in the Track 5 Scoping Memo and Ruling to aid the Commission's efforts to timely resolve the scope of this proceeding. Public discussion and formal comment has not been eliminated.

Now, we take a moment to clarify for the Joint Parties the Commission's procedures regarding evidentiary hearing. Pursuant to Pub. Util. Code Section 1701.1 and Rule 7.3 of the Commission's Rules, the Assigned Commissioner issues a scoping memo for the proceeding (see discussion above) and makes a final determination of whether evidentiary hearing is needed. The Assigned Commissioner's Scoping Memo and Ruling determined that evidentiary hearing is not needed in Track 5 for this proceeding given the schedule of activities.<sup>12</sup> The schedule of activities calls for comments, rather than testimony,<sup>13</sup> to develop the record of Track 5. Comments, rather than testimony, are appropriate for this proceeding because the issues scoped within Track 5 turn on matters of policy.

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<sup>12</sup> While the Order Institution Rulemaking (OIR) preliminarily determined that hearings may be needed, the Commission delegated further definition of procedure and schedule for the rulemaking to the Assigned Commissioner and Administrative Law Judge as determined in the Assigned Commissioner's Scoping Memo and Ruling, or subsequent ruling. (See OIR at 9-11.)

<sup>13</sup> For example, typically, upon service of rebuttal testimony evidentiary hearing may be needed if there are material issues of disputed fact. Track 5 of this proceeding is not taking testimony.

Finally, we note for the Joint Parties that nothing in Pub. Util. Code Section 1701 or Section 1705 restricts the Commission's ability to set the scope or schedule of a proceeding or modify the scope or schedule of proceeding.<sup>14</sup>

In conclusion, we find the arguments presented by Joint Parties unpersuasive and without merit. Therefore, we deny Joint Parties' motion for reconsideration to amend the Assigned Commissioner's Scoping Memo and Ruling for Track 5.

#### **4. Track 5 Schedule of Activity Modification**

Though not legally required, nevertheless, we choose to modify the Track 5 schedule of activities to permit those stakeholders who wish to submit into the record a draft microgrid multi-property tariff of their own. The Commission reiterates its firm commitment to resolving Track 5 of this proceeding timely. The modified schedule below reflects our commitment to timely resolve Track 5 while still promoting robust stakeholder engagement.

Therefore, stakeholders that chose to submit a draft microgrid multi-property tariff of their own into the record of this proceeding shall do so by following the guiding principles set forth in the August 8, 2023, Assigned Administrative Law Judge's Ruling.<sup>15</sup> These guiding principles adhere to our statutory requirements to not shift costs between ratepayers when developing tariffs and rules that reduce barriers for microgrid deployment.<sup>16</sup> Should a

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<sup>14</sup> Joint Parties' Motion at 3-4, arguing that the Commission's ability to modify the scope or schedule of a proceeding is restricted by Pub. Util. Code Section 1701 and/or Section 1705.

<sup>15</sup> See *Administrative Law Judge's Ruling Ordering Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company to Draft a Microgrid Multi-Property Tariff*, August 8, 2023.

<sup>16</sup> Pub. Util. Code § 8371(b).

stakeholder propose a draft microgrid multi-property tariff, the stakeholder shall use the following guiding principles to inform their proposal:<sup>17</sup>

- Provide the rules, terms, and conditions defining the relationship between the utility and the microgrid;
- Align the microgrid multi-property tariff with all applicable Commission policies and state and local permitting requirements;
- Align the microgrid multi-property tariff with existing electric service rules (*e.g.*, Rule 2) and existing interconnection processes;
- Provide equitable service and universal access while avoiding discriminatory practices;
- Avoid cross-subsidization and cost shifts between participants and non-participants; and
- Contain sufficient information and details to facilitate evaluation by Commission staff, the Joint IOUs, and stakeholders.

A stakeholder who proposes a draft microgrid multi-property tariff shall also follow these requirements:<sup>18</sup>

- Comply with Pub. Util. Code Section 218 regarding rules for electrical corporations;
- Define and standardize the technical, operational, and regulatory requirements for microgrids that utilize a utility distribution system to provide resiliency services to two or more end users;
- Define roles, responsibilities, and requirements for all parties during microgrid development and testing,

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<sup>17</sup> See *Administrative Law Judge's Ruling Ordering Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company to Draft a Microgrid Multi-Property Tariff*, August 8, 2023.

<sup>18</sup> *Id.*

- ongoing microgrid operations and maintenance, and modifications or changes to microgrid once operational;
- Address and prioritize safety and system reliability, including but not limited to, public and worker safety, utility system protection, and cybersecurity;
  - Demonstrate compliance with existing rules, regulations, and other tariffs, as well as identify any potential barriers or conflicts with existing rules, regulations, tariffs. Where barriers or conflicts are identified, propose potential solutions and processes to address them;
  - Allow for the utility to always maintain control of its distribution system;
  - Ensure that any generation and storage resources with the ability to operate in parallel with a utility are interconnected to that utility's distribution system;
  - Do not prohibit generation resource technologies;
  - Require all generation resources to comply with all applicable emissions standards;
  - Do not restrict ownership of generation or storage resources;
  - Do not unduly restrict utility or other third-party owned resources from participating in markets, participating in programs, or providing services during normal utility grid conditions;
  - Address service quality for all electricity delivered;
  - Establish mechanisms to ensure consumer and ratepayer protection;
  - Address communications and telemetry between microgrid and utility;
  - Address metering, billing, and settlement processes for delivered electricity; and
  - Explain how pricing is established, if relevant.



The new Schedule of Activities is hereby modified, below:

**Track 5 Modified Schedule**

EVENT	DATE	New Date
PG&E Submittal of its Community Microgrid Enablement Tariff into the Record	July 31, 2023	No Change
ALJ Ruling: Ordering PG&E, SCE, and SDG&E to Develop and Submit a Pro-Forma Standard Microgrid Multi-Property Tariff, and Any Necessary Utility-Specific Deviations, that is Based on PG&E’s Community Microgrid Enablement Tariff, into the Record	August 9, 2023	No Change
PG&E, SCE, and SDG&E Submit Pro-Forma Standard Microgrid Multi-Property Tariff, and Any Necessary Utility-Specific Deviations, into the Record	October 9, 2023	No Change
Opening Comments, limited to no more than 20 pages, to IOU Pro-Forma Standard Microgrid Multi-Property Tariff, and Any Necessary Utility-Specific Deviations, filed and served	October 27, 2023	No Change
Reply Comments, limited to no more than 10 pages, to IOU Pro-Forma Standard Microgrid Multi-Property Tariff, and Any Necessary Utility-Specific Deviations, filed and served	November 10, 2023	No Change
Voluntary Activity: Stakeholder Pro-Forma Standard Microgrid Multi-Property Tariff, into the Record, filed and served		November 9, 2023
Opening Comments, limited to no more than 20 pages, to Voluntary Stakeholder Pro-Forma Standard Microgrid Multi-Property Tariff, filed and served		December 8, 2023

EVENT	DATE	New Date
Reply Comments, limited to no more than 10 pages, to Voluntary Stakeholder Pro-Forma Standard Microgrid Multi-Property Tariff, filed and served		December 22, 2023
<del>ALJ Ruling: Energy Division Staff Proposal on Microgrid Multi-Property Tariffs</del>	January 22, 2023	Event Removed
Energy Division Public Workshop on Stakeholder Proposals for Microgrid Multi-Property Tariffs	March 2024	Date Change
<del>Opening Comments to Energy Division Staff Proposal on Microgrid Multi-Property Tariffs, filed and served</del>	February 19, 2024	Event Removed
<del>Reply Comments to Energy Division Staff Proposal on Microgrid Multi-Property Tariffs, filed and served</del>	March 11, 2024	Event Removed
Proposed Decision	Within 90 days from submission of Track 5 record	No Change

**IT IS RULED** that:

1. The October 6, 2023, *Joint Parties Motion to Amend Track Five Scoping Memo and Ruling* filed by Green Power Institute, Center for Biological Diversity, The Climate Center, and Microgrid Resources Coalition is **DENIED**.

2. Stakeholders who wish to submit a draft microgrid multi-property tariff shall form such draft tariff in accordance with the Guiding Principles and Tariff Requirements set forth in this ruling, as previously set forth in the August 8, 2023 *Assigned Administrative Law Judge's Ruling Ordering Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company to Draft a Microgrid Multi-Property Tariff*.

3. Stakeholders who wish to submit a draft microgrid multi-property tariff shall file and serve their proposal on November 9, 2023.

4. The Schedule of Activities for Track 5 of this proceeding is hereby modified pursuant to the order of this ruling.

Dated October 23, 2023, at San Francisco, California.

/s/ GENEVIEVE SHIROMA  
Genevieve Shiroma  
Assigned Commissioner

/s/ COLIN RIZZO  
Colin Rizzo  
Administrative Law Judge