Decision 23-04-005 April 6, 2023

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Sunnova Community Microgrids California, LLC for a Certificate of Public Convenience and Necessity to Construct and Operate Public Utility Microgrids and to Establish Rates for Service.	Application 22-09-002

DECISION GRANTING THE PUBLIC ADVOCATES OFFICE OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION MOTION TO DISMISS SUNNOVA COMMUNITY MICROGRIDS CALIFORNIA, LLC'S APPLICATION

TABLE OF CONTENTS

Title **Page**

DECISION GRANTING THE PUBLIC ADVOCATES OFFICE OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION MOTION TO DISMISS SUNNOVA COMMUNITY MICROGRIDS CALIFORNIA, LLC'S APPLICATION 1
Summary 2
1. Background 2
1.1. Procedural Background 3
2. Jurisdiction 4
3. The Application 7
4. Motion to Dismiss Application, and Protests to Application 7
5. Response to Protests and Motion to Dismiss 14
6. Discussion 14
6.1. Legal Standard for Ruling on a Motion to Dismiss an Application 14
6.2. The Undisputed Facts Establish that the Applicant Fails to State a Claim for Which Relief May be Granted and the Motion to Dismiss Must be Granted as a Matter of Law 16
6.2.1. The Motion to Dismiss Is Not Improper 16
6.2.2. The Exemptions SCMC Seeks Are Unauthorized 17
6.2.3. SCMC Fails to Provide the Information Required for a Certificate of Public Convenience and Necessity 19
7. Summary of Public Comment 21
8. Conclusion 22
9. Comments on Proposed Decision 22
10. Assignment of Proceeding 26
Findings of Fact 26
Conclusions of Law 29
ORDER 31

DECISION GRANTING THE PUBLIC ADVOCATES OFFICE OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION MOTION TO DISMISS SUNNOVA COMMUNITY MICROGRIDS CALIFORNIA, LLC'S APPLICATION

Summary

The Commission hereby grants the motion of the Public Advocates Office of the California Public Utilities Commission (Cal Advocates) to dismiss the Application filed by Sunnova Community Microgrids California, LLC (SCMC) for a Certificate of Public Convenience and Necessity (CPCN) to Construct and Operate Public Utility Microgrids and to Establish Rates for Service.[1] For the reasons discussed below, we grant Cal Advocates' motion to dismiss because: (1) Cal Advocates' motion to dismiss is not improper; (2) the exemptions SCMC seeks are unauthorized; and (3) SCMC fails to provide the information required for a CPCN.

Application 22-09-002 is closed.

1. Background

On September 6, 2022, Sunnova Community Microgrids California, LLC (SCMC) submitted an application (Application) for a Certificate of Public Convenience and Necessity (CPCN) seeking Commission authorization for the construction and operation of public utility microgrids by SCMC in the State of California and to establish rates for service.[2] In its Application, SCMC requests approval from the Commission to own and operate microgrids that will be constructed as part of new master-planned residential communities consisting of

[1] In granting Cal Advocates' Motion to Dismiss, the Commission grants the requests for dismissal by The Utility Reform Network, Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company to dismiss the Application, as stated in their protests to the Application.

[2] SCMC Application at 1.

between 500 to 2,000 new homes and select non-residential facilities that are co-located in or an essential part of the community plan.[3] SCMC states that by owning and operating each community microgrid and providing electrical service to the microgrid's customers, SCMC will be an electrical corporation serving approximately 2,000 customers, and proposes to be a microutility for each community, with a service area defined by the communities' boundaries.[4]

1.1. Procedural Background

On October 6, 2022, 350 Bay Area filed a response to the Application. On October 10, 2022 the following parties submitted responses or protests to the Application: (1) California Energy Storage Alliance (CESA), response; (2) California Solar & Storage Association (CSSA), response; (3) Clean Coalition, response; (4) Coalition of California Utility Employees (CCUE), protest; (5) Local Government Sustainable Energy Coalition, The Climate Center, World Business Academy, Zero Net Energy Alliance, Center for Biological Diversity (Joint Respondents), response; (6) Microgrid Resources Coalition (MRC), response; (7) Pacific Gas and Electric Company (PG&E), protest; (8) Peninsula Clean Energy Authority, Sonoma Clean Power Authority (Joint CCA), protest; (9) Public Advocates Office of the California Public Utilities Commission (Cal Advocates), protest; (10) San Diego Gas & Electric Company (SDG&E), protest; (11) Solar Energy Industries Association, Vote Solar (SEIA), response; (12) Southern California Edison Company (SCE), protest; (13) The Utility Reform Network (TURN), protest; and (14) World Business Academy, response.

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[3] *Id.*

[4] *Id.*

On October 17, 2022, Cal Advocates filed a motion to dismiss SCMC's Application. On October 20, 2022, SCMC filed a reply to the October 10, 2022 responses and protests.

On November 1, 2022, CCUE filed a response in support of Cal Advocates' motion to dismiss SCMC's Application. On November 1, 2022, SCMC filed a response in opposition of Cal Advocates' motion to dismiss. On November 14, 2022, Cal Advocates filed a reply in response to SCMC's opposition of its motion to dismiss.

The record of this proceeding was submitted on November 14, 2022.

2. Jurisdiction

Pursuant to Article XII, Sections 1 through 6 of the California Constitution, the Commission "has broad authority to regulate utilities."[5] The California Legislature enacted the Public Utilities Act which authorized the Commission to supervise and regulate every public utility in California and to do all things which are "necessary and convenient in the exercise of such power and jurisdiction."[6] Specifically, Article XII, Section 3 of the California Constitution provides that "the production, generation, transmission, or furnishing of heat, light, water, power" fall under the jurisdiction of the legislature. California Public Utilities Code statutes are enforced by the Commission.[7]

Section 382(b) states that electricity is a basic necessity, that all residents of the State should be able to afford essential electricity and gas supplies, and that

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[5] *Ford v. Pacific Gas & Electric Company* (1997) 60 Cal. App.4th 696, 700, citing to *San Diego Gas & Electric Company v. Superior Court*, (1996) 13 Cal. 4th 893, 914-915.

[6] Public Utilities Code Section 701. All references to "Sections" herein are to the California Public Utilities Code unless otherwise noted.

[7] Article XII, Section 5.

the Commission shall ensure that low-income ratepayers are not jeopardized or overburdened by monthly energy expenditures.[8]

Section 451 requires that rates, terms, and conditions of utility service must be just and reasonable.[9] Section 454.51 states that the Commission is entrusted with assuring that public utilities develop a portfolio of energy resources that assure the reliability of the state's long-term electric supply.[10]

Section 218, commonly referred to as the "over-the-fence rule," requires any entity who wishes to sell energy to more than two contiguous parcels or across the street to become a regulated, electrical corporation as defined under Section 216, within certain limited exceptions. If an entity becomes an electrical corporation, it is a public utility subject to our regulation. When an entity is subject to our jurisdiction, it is our duty to ensure that the public utility is meeting public customer service expectations and public safety standards, and maintains just and reasonable rates, as well as just and reasonable terms and conditions of utility service.[11]

Section 2780 defines "electric microutility" as any electrical corporation that is regulated by the Commission 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.[12]

Section 8371 requires the Commission to facilitate the commercialization of microgrids. Section 8371(b) requires the Commission, without shifting costs

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[8] Section 382(b).

[9] Sections 451, 454 and 728.

[10] Section 454.51, subds. (a) and (b).

[11] Sections 451, 454 and 728.

[12] Section 2780.

between ratepayers, to develop methods to reduce barriers for microgrid deployment.

Section 1003 requires that application for a CPCN "**shall** include all of the following information in the application **in addition to any other required information**" (**emphasis added**):

> (a) Preliminary engineering and design information on the project. The design information provided for thermal electric plants shall include preliminary data regarding the operating characteristics of the proposed plant, including, but not limited to, the annual capacity factor, availability factor, and the heat rate for each year of the useful life of the plant, line, or extension;
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> (b) A project implementation 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.
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> (c) An 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;
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> (d) 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;
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> (e) A design and construction management and cost control 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."

Finally, the Commission's Rules of Practice and Procedure (Rule or Rules) govern the parameters for motions, and a motion to dismiss. Rule 11.1(b) states that a motion may be made at any time during the pendency of a proceeding by any party to the proceeding. Rule 11.2 states that a motion to dismiss a proceeding based on the pleadings (other than a motion based on lack of jurisdiction) shall be made no later than five days prior to the first day of hearing.

3. The Application

As stated above, SCMC's Application requests a CPCN to become a microutility, *i.e.,* a small, investor-owned electrical utility, that owns, constructs, and operates microgrids, including the associated distribution system, established in service areas of PG&E, SCE, and SDG&E under the statutory strictures of Section 2780. In other words, SCMC requests the Commission's approval for it to provide bundled retail service under Section 2780. The Application also requests authority to establish market-based rates for service and requests exemption from several of the Commission's general orders and rules, including General Order 96-B and the Commission's Affiliate Transaction Rules.

4. Motion to Dismiss Application, and Protests to Application

In its motion to dismiss, Cal Advocates claims the Commission should dismiss the Application on various grounds. Cal Advocates states the Application proposes that SCMC would operate under drastic, limited

regulations and waived rules, including rules pertaining to important consumer and ratepayer protections.[13] Cal Advocates argues that SCMC's requests are based on "unsubstantiated claims and lack the basic information that [Section] 1003 and Rule 3.1 require for issuance of a CPCN."[14] Cal Advocates also contends: (1) the Commission should not consider SCMC's Application before a regulatory framework for multi-customer microgrids is developed in Rulemaking 19-09-009;[15] (2) in Decision (D.) 21-01-018, the Commission rejected the same proposal to rely on the microutility statute that SCMC proposes;[16] (3) SCMC's proposal does not meet the statutory definition of a microutility;[17] (4) SCMC fails to meet its burden to demonstrate that its proposals will ensure rates are just, reasonable, and necessary;[18] (5) SCMC fails to meet its burden to demonstrate that its microgrid proposal will ensure public safety;[19] (6) SCMC fails to provide information required by Section 1003 and Rule 3.1;[20] (7) SCMC fails to satisfy the requirements of Section 1001;[21] (8) SCMC's Application does not provide information necessary to address technical and engineering issues;[22] and (9) SCMC's proposal to waive Affiliate Transaction Rules is unreasonable.[23]

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[13] Motion to Dismiss at 1.

[14] *Id.*

[15] *Id.* at 5.

[16] *Id.* at 7.

[17] *Id.* at 9.

[18] *Id.* at 10.

[19] *Id.*

[20] *Id.* at 11-12.

[21] *Id.* at 14.

[22] *Id.* at 14-15.

[23] *Id.* at 15-16.

CCUE filed a response in support of Cal Advocates' motion to dismiss. CCUE argues that that the Application should be dismissed because it could allow SCMC to serve more than 2,000 customers.[24] CCUE states that SCMC appears "to know that it does not qualify as a microutility and therefore, proposes to be a distinct microutility for each community with less 2,000 customers."[25] CCUE also states that SCMC seeks an exemption from the Commission's Affiliate Transaction Rules so it can "use the parent company's resources."[26]

CCUE also states that SCMC's Application should be dismissed because it fails to include all the necessary information for a CPCN, required by Section 1003. CCUE states that SCMC's Application fails to provide the following, as required by statute: (1) preliminary engineering and design information; (2) a project implementation plan for design, construction, and operation; (3) estimates of the costs of financing, construction, operation, maintenance, and decommissioning; (4) a cost analysis of the project compared to feasible alternative sources of power; and (5) a design and construction management and cost control plan.[27] Finally, CCUE argues that SCMC's Application should be dismissed because it raises significant legal and policy concerns that implicate Sections 2780.1, 380, 399.11, 454.51, 454.2, 454.54, 8386, 740.12(b), 739.1, 454, and 8371.[28]

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[24] CCUE Response in Support of Motion to Dismiss (Response) at 2.

[25] *Id.*

[26] *Id.*

[27] *Id.* at 3.

[28] *Id.* at 3-4.

While TURN, SCE, PG&E, and SDG&E did not file responses to Cal Advocates' motion to dismiss, these parties did suggest the Application should be dismissed in their respective protests. For instance, TURN states that: (a) SCMC's Application does not meet the statutory requirements of a CPCN Application;[29] (b) that issues raised by SCMC should be addressed in Rulemaking 19-09-009; [30] and (c) that SCMC's Application does not address the obligations of the microgrids nor does it identify the Commission's role in rate regulation for its proposed new microgrids.[31] Similar to Cal Advocates, TURN also raised concerns about SCMC's request for waiver of the Commission's Affiliate Transaction Rules.[32]

For its part in its protest, SCE argued the Commission should dismiss the Application. First, SCE states the Application contravenes the Commission's longstanding prohibition on issuing declaratory judgments and advisory opinions.[33] SCE points out that the Application contains:

> [N]umerous, unknown, unspecified and important elements regarding the development of [its proposed] microgrids including: (1) the timeframe for development; (2) identity and number of customers served; (3) proposed "market based" rates SCMC proposes to directly negotiate with customers; (4) SCMC's financial resources; (5) number and location of greenfield locations throughout the state; (6) associated reliability and resiliency needs at each proposed location; (7) the type and size of facilities that may be islanded; and (8) where these facilities will

[29] TURN Protest at 3.

[30] *Id.*

[31] *Id.* at 5.

[32] *Id.* at 4.

[33] SCE Protest at 6.

> connect to the [large, investor-owned utilities'] distribution or transmission system for the purpose of exporting and importing, providing backup power, or may be served in emergencies by gas or diesel generators.[34]

SCE concludes that given the "abstract and conceptual nature of the Application," any "opinion issued by the Commission would be an advisory opinion."[35]

Next, SCE also states that SCMC's proposed business model does not comport with the plain language or legislative intent of Section 2780.[36] SCE argues that Section 2780 does not contemplate or permit the wide, sweeping regulatory exemptions the Application seeks, including exemptions for unregulated "market-based rates" and waivers of the Affiliate Transaction Rules.[37] Finally, SCE states the Application does not have the specificity required by the CPCN statutes.[38]

SDG&E also asserts that the Application is legally and factually deficient and should be dismissed.[39] SDG&E states the Application is "fatally flawed" because it: (1) does not establish that SCMC is eligible or qualified to provide bundled retail service as a microutility or public utility in California; (2) fails to satisfy the criteria established for CPCN approval; and (3) presents a rate proposal that is manifestly unreasonable and discriminatory.[40]

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[34] SCE Protest at 6-7.

[35] *Id.* at 7.

[36] *Id.* at 8.

[37] *Id.* at 9.

[38] *Id.* at 11.

[39] SDG&E Protest at 6.

[40] *Id.*

SDG&E also states that the Application's reliance on Section 2780 is misplaced. SDG&E argues that this reliance is misplaced because: (a) the Application establishes that each microutility will interconnect with the local utility for the purposes of participating in the California Independent System Operator's wholesale markets, which disqualifies the microutility as a "sole-source" entity; and (b) the Application proposes to create a nexus of individual microutilities that in aggregate could exceed the statute's 2,000 customer limit.[41]

SDG&E also states the Application fails to establish that SCMC is prepared to accept the legal obligations applicable to public utilities in California.[42] SDG&E states that SCMC's arguments in support for its request for market-based rates "gets wrong the nature of public utility regulation as applied to retail electric service monopoly."[43] SDG&E asserts that SCMC's:

> [M]onopoly analysis ignores the public utility nature of distribution service. It treats the monopoly problem as solved by presenting the illusion of choice and competition in the form of rate negotiations with developers and the ability of potential homeowners to decline buying into the development if they object to the rates negotiated….[44] there is no legal or factual basis for exempting SCMC's developments from Commission public utility rate regulation.[45]

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[41] *Id.* at 7-8.

[42] *Id.* at 9-13.

[43] *Id.* at 17.

[44] *Id.* at 18.

[45] *Id.* at 19.

Finally, like Cal Advocates, TURN, CCUE, and SCE, SDG&E argues that SCMC fails to satisfy the criteria for a grant of a CPCN.[46]

PG&E raises similar grounds for dismissal as Cal Advocates, TURN, CCUE, SCE, and SDG&E. First, PG&E points out that SCMC relies on Section 2780,[47] which 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."[48] PG&E argues that the intent of Section 2780's legislative history 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."[49] PG&E points out that SCMC's 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."[50]

Second, similar to TURN, Cal Advocates, SCE, and SDG&E, PG&E raises concerns with SCMC's request for exemption from the Commission's Affiliate Transaction Rules. PG&E states that waiver of the Commission's Affiliate Transaction Rules makes "clear [SCMC's] business model relies on common resources" of its corporate parent.[51] Third, PG&E states SCMC fails to provide the information required by the CPCN statutes, which include Sections 1003,

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[46] *Id.* at 13-16.

[47] PG&E Protest at 9.

[48] *Id.*

[49] *Id.* at 10.

[50] *Id.* at 10.

[51] *Id.* at 11.

1003(b), 1003(c), 1003(d), 1003(e), 1004, 1005.5(a), and 1005(b).[52] In short, PG&E states that 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).[53]

5. Response to Protests and Motion to Dismiss

In response to the protests and responses to its Application, SCMC submitted its opposition (Opposition). SCMC states that its requests for rates and terms and conditions of service, California Environmental Quality Act Review, Affiliate Transaction waiver, and microutility status are supported by precedent and are appropriate.[54]

In opposition to Cal Advocates' motion to dismiss, SCMC makes an array of arguments. First, SCMC states that the motion is an "end-run" around Rule 2.6. SCMC also states that Cal Advocates' protest and motion to dismiss undercut its request for dismissal under Commission precedent.[55] Finally, SCMC states that Cal Advocates' interpretation of D.21-01-018 is fatally flawed because SCMC is "applying to become an electrical corporation … and explains how it will comply with applicable utility requirements."[56]

6. Discussion

6.1. Legal Standard for Ruling on a Motion to Dismiss an Application

The Commission's standard for reviewing a motion to dismiss is: "'[b]y assuming that the facts as alleged in the application are true for the purposes of

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[52] *Id.* at 11-14.

[53] *Id.* at 15.

[54] SCMC Opposition at 14-18.

[55] *Id.* at 2-4.

[56] *Id.* at 7.

deciding whether to grant a motion to dismiss, we assume that the applicant will be able to prove everything the applicant alleged in its application…'"[57] However, the Commission does "not accept as true the ultimate facts, or conclusions, that Applicant alleges, for instance, that granting the [application] would be in the public interest."[58]

In *Application of Western Gas Resources-California, Inc. for a Certificate of Public Convenience and Necessity to Provide Public Utility Gas Transmission and Distribution Services*, D.99-11-023, the Commission noted that applications have been dismissed on policy grounds, to husband limited resources, to avoid conflict with statutory policy, to avoid inefficiency, "and many other reasons."[59] The Commission held that, "[a]fter accepting the facts as stated, the Commission then merely looks to its own law and policy. The question becomes whether the Commission and the parties would be squandering their resources by proceeding to an evidentiary hearing when the outcome is a foregone conclusion under the current law and policy of the Commission."[60] While the Commission may elect to alter policy in connection with an application, it can make the choice not to do so at the outset of an application in response to a motion to dismiss.[61]

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[57] *Application of GoGo Technologies, Inc. (dba GoGoGrandparent) for order declaring Applicant to be a non-regulated entity; to stay enforcement action pending resolution*, D.18-11-028 (2018 WL 6566916 at 2) (quoting *Application of Western Gas Resources-California, Inc. for a Certificate of Public Convenience and Necessity to Provide Public Utility Gas Transmission and Distribution Services*, D.99-11-023, 1999 Cal. PUC LEXIS 856, 10-11 (Cal. PUC 1999).

[58] *Id*.

[59] D.99-11-023 at 2.

[60] *Id*. at 3.

[61] *Id.*

6.2. The Undisputed Facts Establish that the Applicant Fails to State a Claim for Which Relief May be Granted and the Motion to Dismiss Must be Granted as a Matter of Law

6.2.1. The Motion to Dismiss Is Not Improper

SCMC argues that Cal Advocates' motion to dismiss is temporally and procedurally improper.[62] However, this argument ignores the language embodied in our Rules.

Rule 11.1(b) states that, "[a] motion may be made at any time during the pendency of a proceeding by any party to the proceeding." More specifically, Rule 11.2 states that, "[a] motion to dismiss a proceeding based on the pleadings (other than a motion based on lack of jurisdiction) shall be made no later than five days prior to the first day of hearing." There has been no hearing, and so, Cal Advocates' motion is not improper under either Rule 11.1 or 11.2.

SCMC also argues that granting a motion to dismiss would be a "drastic" remedy.[63] Although this may be true in the abstract, SCMC's argument would be more persuasive were there not already an ongoing rulemaking[64] specifically intended to ensure the orderly adoption of microgrids in California.[65] As discussed, the Commission does not accept as true the ultimate facts, or conclusions, that SCMC alleges in its application, for instance, that granting a

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[62] SCMC Opposition at 1-3.

[63] *Id*. at 2-3.

[64] See R.19-09-009, Microgrids and Resiliency Strategies.

[65] *See* R.19-09-009.

CPCN would be in the public interest. The preliminary issue is whether the application is properly before the Commission.[66]

Here, many of the facts that SCMC claims are in "dispute" are "ultimate facts," or if uncertainty arises, it is because of a failure of SCMC to adduce and provide the facts necessary under Section 1003 and Rule 3.1, discussed below, for a reasoned consideration of its application.

6.2.2. The Exemptions SCMC Seeks Are Unauthorized

In its application, SCMC seeks numerous exemptions from statutory requirements for electrical corporations based on its proposed characterization as an "electric microutility" under Section 2780. However, that statute defines an "electric microutility" as an "***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" (**emphasis added**). Thus, by the express terms of the statute, an "electrical microutility" must also meet the definition of an "electrical corporation."

The Commission has already confirmed this interpretation in the aforementioned microgrid rulemaking, in D.21-01-018, by stating "we reject the assertion that under Section 2780, we can exempt 'microutilities' from the requirements applicable to electrical corporations."[67] In other words, the requirements that pertain to electrical corporations are the same requirements

[66] D.21-08-022, *In the Matter of the Application of Pacific Gas and Electric Company for Authority to Issue Recovery Bonds for Stress Test Costs Pursuant to Article 5.8 of the California Public Utilities Code*, at 13.

that pertain to electric microutilities.[68] SCMC cannot avoid the requirements incumbent on an "electrical corporation" merely if it were to also qualify as an "electrical microutility," which by its own proposal it would not do anyway.[69] SCMC has not sought a petition for modification to D.21-01-018, but is instead seeking a divergent, contrary ruling in a totally new proceeding.

More specifically, SCMC is seeking to be exempt from the Commission's statutorily required function of conducting oversight of electricity rates to ensure that they are just and reasonable. SCMC would like authorization "to enter into agreements for market-based, negotiated rates and terms and conditions with its customers for electric supply and microgrid services."[70] SCMC would then provide cost, rate, and tariff data through subsequent informational filings.[71] SCMC also proposes that its filings be exempt from the advice letter process, stating that it "requests any waiver of General Order 96-B and any other waivers the Commission is required for SCMC to implement this proposal."[72] SCMC further requests a waiver of affiliate transaction rules to allow use of a parent company's resources.[73]

However, to grant SCMC this authority, the Commission would have to abdicate its responsibility to ensure just and reasonable rates under Sections 451 and 454. Section 451 provides that "[a]ll charges demanded or received by any public utility . . . shall be just and reasonable" and that "[e]very unjust or

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[69] *Id.*

[70] SCMC Application at 42.

[71] *Id.* at 51-52.

[72] *Id.* at 43-44.

[73] *Id.* at 52-55.

unreasonable charge demanded or received for such product or commodity, or service is unlawful."

Section 454(a) requires that any change to an established rate can only be accomplished "upon a showing before the commission and a finding by the commission that the new rate is justified." Taken together, Sections 451 and 454 confer substantial and non-delegable responsibility on the Commission to ensure the justness and reasonableness of rates. The Commission does not have the authority to change, modify, or waive the requirements of the California Public Utilities Code simply on an application by a party; and SCMC's proposal for the prospective, market-based setting of rates apart from Commission and stakeholder scrutiny would contradict Sections 451 and 454. SCMC cannot simultaneously meet the definition of an "electrical corporation," which it seeks by its application, and then be exempted from the requirements of an electrical corporation because it is partially operating in the microgrid sphere.[74]

6.2.3. SCMC Fails to Provide the Information Required for a Certificate of Public Convenience and Necessity

SCMC's application further fails to include statutorily required information necessary for evaluation of a CPCN.[75] Section 1003 requires that such an application "**shall** include all of the following information in the application **in addition to any other required information**" (**emphasis added**):

> (a) Preliminary engineering and design information on the project. The design information provided for thermal electric plants shall include preliminary data regarding the operating characteristics of the proposed plant, including, but not limited to, the annual capacity

[74] *Id.* at 20.

[75] *Id.* at 16-17.

> factor, availability factor, and the heat rate for each year of the useful life of the plant, line, or extension;
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> (b) A project implementation 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;
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> (c) An 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;
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> (d) 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; and
>
> (e) A design and construction management and cost control 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."

Instead of providing this information in its application, SCMC proposes to submit informational filings, at unknown later dates, that will furnish "[d]esign, engineering, implementation, construction, and operations plans, project costs and financing, and any other information required under Public Utilities Code

Section 1003 and Rule 3.1 that is not otherwise provided in this Application."[76] This is a wholesale failure to provide the initial information required by Section 1003, and the Commission cannot simply ignore the statutory requirements of Section 1003 as an "exception" for SCMC, as it seeks here.

Similarly, Rule 3.1, which also pertains to the construction of new electrical facilities, requires that applicants provide sufficient information for a reasoned analysis of an application. This includes: (a) a "full description of the proposed construction or extension, and the manner in which it will be constructed;" (b) 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;" (c) "such health and safety permits as the appropriate public authorities have required or may require for the proposed construction or extension;" (d) "the estimated cost of the proposed construction or extension and the estimated annual costs, both fixed and operated" and demonstrate that the project is "economically feasible;" (e) "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 costs of the proposed construction or extension;" and (f) "proposed rates to be charged for service to be rendered by means of such construction or extension." SCMC's application likewise fails to provide the information required by Rule 3.1 and fails for this reason as well.

7. Summary of Public Comment

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online

[76] *Id*. at 51.

Docket Card for that proceeding on the Commission's website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding. Here, the California Environmental Justice Alliance and Reclaim Our Power: Utility Justice Campaign expressed their support for microgrid projects.

8. Conclusion

For the reasons discussed above, we grant Cal Advocates' motion to dismiss the application because: (1) Cal Advocates' motion to dismiss is not improper; (2) the exemptions SCMC seeks are unauthorized; and (3) SCMC fails to provide the information required for a CPCN.

9. Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Colin Rizzo in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on March 6, 2023 by: (1) 350 Bay Area; (2) California Energy Storage Alliance (CESA); (3) California Solar & Storage Association (CSSA); (4) Microgrid Resources Coalition (MRC); (5) Pacific Gas and Electric Company (PG&E); (6) Solar Energy Industries Association (SEIA); (7) Southern California Edison Company (SCE); (8) Sunnova Community Microgrids California, LLC (SCMC); (9) The Climate Center, Local Government Sustainable Energy Coalition, Center for Biological Diversity, World Business Academy, Zero Net Energy Alliance (Joint Respondents); and (10) Vote Solar.

Reply comments were filed on March 13 by: (1) Coalition of California Utility Employees (CUE); (2) PG&E; (3) SCE; (4) SCMC; (5) SDG&E; (6) The Public Advocates Office; and (7) The Utility Reform Network.

We have carefully considered the suggested changes proposed by parties in their comments and their reply comments to this Decision. We take a moment to directly address some suggested changes below.

TURN asserts that SCMC fails to present factual or legal errors contained in the PD and that the Commission should reject SCMC and other' parties' assertion that SCMC's Application is in the public interest. We agree.

350 Bay Area opposes the Decision because granting the motion to dismiss is not in the public interest. We disagree for the reasons discussed throughout the Decision.

CESA argues that moving the discussion of the items in SCMC's Application to Rulemaking 19-09-009 is inappropriate and ineffective as well as that the Decision fails to consider the benefits that could be provided through SCMC's business model. We disagree for the reasons discussed throughout the Decision.

The Joint Respondents argue that the Decision would deprive stakeholders and the public of the opportunity to fully assess the microutility model for new residential communities through a public hearing, the Decision fails to acknowledge any of the support for the Application or the potential benefits that could be realized by the state of California, and that the Commission is not sufficiently addressing microgrid commercialization or creating clear regulatory pathways for the type of community microgrids proposed in the Application. We disagree for the reasons discussed throughout the Decision.

MRC argues that the Application gives the Commission the opportunity to explore use of its clear statutory authority to permit the establishment of microutilities to help alleviate California's current crisis, but the Decision

squanders that opportunity. We disagree for the reasons discussed throughout the Decision.

SEIA states the Application presents the Commission with a unique opportunity to take action to advance the state's policy initiatives of grid reliability, electrification, and system decarbonization and thus, the Commission should fully consider the Application. We disagree for the reasons discussed throughout the Decision.

CSSA states the Commission has the legal authority to approve the Application, that it is premature to dismiss the Application without a hearing, and that the Commission has not provided a clear regulatory pathway for the type of community microgrids proposed by SCMC. We disagree for the reasons discussed throughout the Decision.

Vote Solar asserts that the dismissal of the Application is short-sighted and does not represent the best interests of California ratepayers. We disagree for the reasons discussed throughout the Decision.

Cal Advocates argues that: (1) SCMC's requests for exemption are unauthorized; (2) the Decision correctly applies the law to reject SCMC's request to sell electricity through private agreements; (3) the Decision's conclusion that the Application is incomplete is based on undisputed facts; (4) unlike SCMC's Application, Rulemaking 19-09-009 is developing evidence to investigate potential microgrid benefits; and (5) the Dismissal is proper.

SCE states that it supports the Decision's thorough legal and policy analysis, and that the Application is facially and fatally flawed because of numerous legal deficiencies. SCE also states the motion to dismiss is proper; the Decision appropriate recognizes that statutory mandates cannot be ignored; the Commission has the discretion to dismiss on policy grounds; the Decision

properly proposes to reject SCMC's request to set market-based rates, deny exemption from the affiliate transaction rules, and that Rulemaking 19-09-009 is the appropriate venue to develop microgrid policy.

PG&E argues that: (1) the Decision properly dismisses the Application because it is legal deficient; (2) Parties fail to directly address the application's legal deficiencies and SCMC misinterprets the legal standard for dismissal. We agree. PG&E also proposed minor modifications we have adopted accordingly.

SCMC argues that: (1) the Decision is incorrect that SCMC is proposing an unregulated private utility; (2) the Decision misapplies the law to conclude that the SCMC is asking the Commission to abdicate its statutory responsibilities; (3) the Decision erroneously concludes that relief is available in another proceeding; (4) the Decision conspicuously ignores substantial factual information in the record and supporting precedent to reach the conclusion that SCMC's Application is incomplete; (5) the Decision gives no weight to the public interest benefits of SCMC's proposal or the public Support for SCMC's Application; (6) the Motion is improper; (7) PG&E and SCE urge the Commission to adopt a proposed decision that is based on legal and factual errors; (8) PG&E and SCE urge the Commission to adopt a proposed decision that does not consider the public interest; and (9) PG&E and SCE are incorrect in supporting the proposed decision's conclusion that Rulemaking 19-09-009 is a suitable substitute. We disagree, for the reasons discussed throughout the Decision.

CUE states that the Decision properly finds that SCMC's Application failed to include all the necessary information required by the Public Utilities Code and the Commission's rules. We agree. CUE argues that the Decision properly dismisses the Application because SCMC does not qualify as a microutility. We agree.

SDG&E asserts that the Decision is procedurally proper and soundly-based. SDG&E also asserts that the Application raises affordability, undue discrimination, and cream-skimming issues. We agree.

10. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Colin Rizzo is the assigned ALJ in this proceeding.

Findings of Fact

1. On September 6, 2022, SCMC applied for a CPCN seeking Commission authorization for the construction and operation of public utility microgrids and to establish rates for service.
2. On October 10, 2022, Cal Advocates filed a protest in response to the Application.
3. On October 10, 2022, the following parties submitted protests to the Application, arguing SCMC's Application should be dismissed: PG&E, SDG&E, and SCE.
4. On October 10, 2022, TURN filed a protest in response to the Application.
5. On October 17, 2022, Cal Advocates filed a motion to dismiss SCMC's Application.
6. On November 1, 2022, CCUE filed a response in support of Cal Advocates' motion to dismiss SCMC's Application.
7. On November 1, 2022, SCMC filed a response in opposition of Cal Advocates' motion to dismiss.
8. On November 14, 2022, Cal Advocates filed a reply in response to SCMC's opposition of its motion to dismiss.

9. Rule 11.1(b) states a motion may be made at any time during the pendency of a proceeding by any party to the proceeding.

10. Rule 11.2 states that a motion to dismiss a proceeding based on the pleadings (other than a motion based on lack of jurisdiction) shall be made no later than five days prior to the first day of hearing.

11. The Commission reviews a motion to dismiss by assuming that the facts as alleged in the application are true for the purposes of deciding whether to grant a motion to dismiss, and the Commission assumes that the applicant will be able to prove everything the applicant alleged in its application.

12. The Commission does not accept as true the ultimate facts, or conclusions, that an applicant alleges; for instance, that granting the application would be in the public interest.

13. In *Application of Western Gas Resources-California, Inc. for a CPCN to Provide Public Utility Gas Transmission and Distribution Services*, D.99-11-023, the Commission stated that applications have been dismissed on policy grounds, or to protect limited resources, or to avoid conflict with statutory policy, or to avoid inefficiency, and for many other reasons.

14. In D.99-11-023, the Commission held that after accepting the facts as stated, the Commission then merely looks to its own law and policy; and the question becomes whether the Commission and the parties would be squandering their resources by proceeding to an evidentiary hearing when the outcome is a foregone conclusion under the current law and policy of the Commission.

15. For the purposes of ruling on Cal Advocates' motion to dismiss, we assume the facts, as set forth in SCMC's Application, are true; with the exception of the ultimate facts or conclusions that SCMC alleges in its Application.

16. Many of the facts that SCMC claims are in "dispute" are ultimate facts, or, if uncertainty arises, it is because of a failure of SCMC to proffer the facts necessary under Public Utilities Code Section 1003 and Rule 3.1 for a reasoned consideration of its Application.

17. SCMC asks for numerous exemptions from statutory requirements over electrical corporations, based on its proposed characterization as an "electric microutility" under Public Utilities Code Section 2780.

18. Public Utilities Code Section 2780 defines an "electric microutility" as an "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."

19. The Commission held in D.21-01-018, from Rulemaking 19-09-009, that it "reject[s] the assertion that under Section 2780, we can exempt 'microutilities' from the requirements applicable to electrical corporations."

20. The requirements that pertain to electrical corporations are the same requirements that pertain to electric microutilities.

21. SCMC seeks exemption from the Commission's statutorily required function of conducting oversight of electricity rates to ensure that they are just and reasonable.

22. SCMC asks for authorization to enter into agreements for market-based, negotiated rates and terms and conditions with its customers for electric supply and microgrid services.

23. SCMC proposes to provide cost, rate, and tariff data through subsequent informational filings.

24. SCMC also proposes that its filings be exempt from: (a) the Commission advice letter process; (b) General Order 96-B; and (c) any other waivers required for SCMC to implement this proposal.

25. SCMC requests a waiver of the Commission's affiliate transaction rules so it can use a parent company's resources.

26. Public Utilities Code Section 451 provides that "[a]ll charges demanded or received by any public utility . . . shall be just and reasonable" and that "[e]very unjust or unreasonable charge demanded or received for such product or commodity, or service is unlawful."

27. Public Utilities Code Section 454(a) requires that any change to an established rate can only be accomplished "upon a showing before the commission and a finding by the commission that the new rate is justified."

28. SCMC's Application fails to include statutorily required information necessary for evaluation of a CPCN.

29. Public Utilities Code Section 1003 requires an array of information from an applicant when the applicant applies for a CPCN.

30. Instead of providing the information required by Public Utilities Code Section 1003 in its Application, SCMC proposes to submit informational filings, at unknown later dates.

31. Rule 3.1, which also pertains to the construction of new electrical facilities, requires that applicants provide sufficient information when applying for a CPCN.

Conclusions of Law

1. Cal Advocates' motion to dismiss SCMC's Application should be granted because SCMC fails to comply with the numerous statutory requirements of the California Public Utilities Code.

2. Cal Advocates' motion to dismiss SCMC's Application should be granted because SCMC's request for exemption from numerous statutory requirements and Commission requirements is improper.

3. Cal Advocates' motion to dismiss SCMC's Application should be granted because it is unreasonable and inconsistent with Public Utilities Code Sections 451 and 454 to grant SCMC exemption from Commission oversight, as the Commission would have to abdicate its responsibility to ensure just and reasonable rates for California ratepayers.

4. Cal Advocates' motion to dismiss SCMC's Application should be granted because SCMC fails to provide the information required for a CPCN pursuant to Public Utilities Code Section 1003.

5. Cal Advocates' motion should be granted because there has been no hearing and therefore, is not improper under either Rule 11.1 or 11.2.

6. SCMC's Application should be dismissed because to grant SCMC the authority it seeks in its Application, the Commission would have to abdicate its responsibility to ensure just and reasonable rates under Public Utilities Code Sections 451 and 454.

7. SCMC's Application should be dismissed because collectively, Public Utilities Code Sections 451 and 454 confer substantial and non-delegable responsibility in the Commission to ensure the justness and reasonableness of rates for ratepayers.

8. SCMC's Application should be dismissed because the Commission does not have the authority to change, modify, or waive the requirements of the California Public Utilities Code simply on an application by a party, and SCMC's proposal for the prospective, market-based setting of rates apart from Commission and stakeholder scrutiny would contradict Sections 451 and 454.

9. SCMC's Application should be dismissed because SCMC cannot simultaneously meet the definition of an "electrical corporation," which it seeks by its application, and then be exempted from the requirements of an electrical corporation because it is partially operating in the microgrid sphere.

10. SCMC'S Application should be dismissed because SCMC's non-compliance with Public Utilities Code Section 1003 is a wholesale failure to provide the initial, statutorily required information, and the Commission cannot ignore these requirements as an "exception" for SCMC.

11. SCMC'S Application should be dismissed because SCMC's Application fails to provide the information required by Rule 3.1.

12. SCMC's Application should be dismissed because SCMC cannot, by way of its application sidestep the requirements of the Public Utilities Code.

O R D E R

IT IS ORDERED that:

1. The Motion of the Public Advocates Office of the California Public Utilities Commission to dismiss Application 22-09-002 is granted.

2. The Application filed by 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 is dismissed.

3. No hearing is necessary.

4. Application 22-09-002 is closed.

5. This order is effective today.

Dated April 6, 2023, at San Francisco, California.

ALICE REYNOLDS
President
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners