

**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  
(Filed September 1, 2022)

**COMMENTS OF JOINT RESPONDENTS ON THE PROPOSED DECISION GRANTING THE  
MOTION OF THE PUBLIC ADVOCATES OFFICE OF THE CALIFORNIA PUBLIC  
UTILITIES COMMISSION TO DISMISS SUNNOVA COMMUNITY MICROGRIDS  
CALIFORNIA, LLC'S APPLICATION**

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**I. Introduction**

Pursuant to the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, The Climate Center, Center for Biological Diversity, World Business Academy, The Energy Coalition, Local Government Sustainable Energy Coalition (“LGSEC”), Zero Net Energy Alliance, California Alliance for Community Energy (“CACE”), and Clean Coalition (collectively “Joint Respondents”) respectfully submit these comments on the Proposed Decision (“PD”) Granting the Public Advocates Office (“PAO”) Motion to Dismiss the Application of Sunnova Community Microgrids California, LLC (“Application”).

The Joint Respondents see great merit in the Application as it provides a needed new pathway and opportunity for developing community microgrids in California that could provide a wide range of benefits and meet numerous California policy goals. Community microgrids, like those envisioned in the Sunnova Application, should be encouraged to promote decarbonization, resiliency, grid reliability, customer choice, and energy equity as the state looks to modernize the electric grid for the 21<sup>st</sup> century. In the context of California’s urgent need to build affordable housing across the state, the microutility model proposed by SCMC could be an effective way to encourage investment and accelerate the design and implementation of affordable housing projects.

The Joint Respondents are very disappointed with the Commission's PD to reject the Sunnova Application without any public consideration of its merits and potential benefits. It is the Commission's duty to conduct a deliberative public process on energy policy issues raised before it. We urge the Commission to reverse course and grant a public hearing for the Application to be fully considered with robust stakeholder input.

## **II. Comments on Proposed Decision**

The Application requests that: 1) Sunnova Community Microgrids California, LLC ("SCMC") become an approved electrical corporation subject to regulation and oversight by the Commission under Section 1001, Section 451, and other sections of the Public Utilities Code;<sup>1</sup> 2) the Commission issue a Certificate of Public Convenience and Necessity ("CPCN") to build microgrids that will provide electric service to residential new home construction master-planned communities; and 3) the Commission consider *different* regulatory treatment as an electrical corporation intending to serve 2,000 or fewer customers, which would categorize it as an electric microutility pursuant to Public Utilities Code Section 2780.<sup>2</sup> The Application requests the Commission consider specifics that could be more appropriate for smaller electrical corporations like SCMC. This would comport with the guidance in Section 2780.1 directing the Commission to consider, in its directives and regulatory oversight of utilities, the differences in scale of electrical corporations that are providing service to a relatively small numbers of customers in a discrete geographic area, compared to large electrical corporations providing service to millions of customers across a large geographic footprint.<sup>3</sup>

The Joint Respondents find this course of action to be reasonable and worthy of consideration in a public proceeding, and we encourage the Commission to be more flexible and open-minded in its evaluation of this novel Application. By making assertions that suggest Sunnova is attempting to skirt regulation or become a private utility with no oversight, which forms the basis of its PD to grant PAO's Motion to Dismiss and reject the Application,<sup>4</sup> the PD seems to misunderstand the main thrust of Sunnova's Application, which is to become an electrical corporation subject to Commission oversight and regulation. While some details of the Application need to be further articulated, including how and to what degree Sunnova is regulated differently than other electrical corporations, the Joint Respondents contend that the Application is compliant with Commission rules and represents a reasonable starting point for the

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<sup>1</sup> Sunnova Application at pg. 1

<sup>2</sup> Public Utilities Code Section 2780

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=2780.&lawCode=PUC](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=2780.&lawCode=PUC)

<sup>3</sup> Public Utilities Code Section 2780.1

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=2780.1.&nodeTreePath=2.2.7&lawCode=PUC](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=2780.1.&nodeTreePath=2.2.7&lawCode=PUC)

<sup>4</sup> PD at pg. 17-19

Commission to consider the details of the microutility proposal with more stakeholder input in a public proceeding. A clear pathway for establishing new microuilities in California could help to advance the state's urgent goals for decarbonization and energy resilience and could enhance overall grid reliability. But no such pathway exists today. This Application provides an opportunity for the Commission to create such a regulatory pathway for new energy providers to build more novel clean energy projects like community microgrids that customers and communities are seeking, with proper oversight by the Commission.

***The PD would deprive stakeholders and the public of the opportunity to fully assess the microutility model for new residential communities through a public hearing.***

The Joint Respondents are troubled by how the current PD would approve PAO's Motion to Dismiss ("Motion") without allowing the Application to receive any public hearing on the matter. Granting a hearing on the Application would follow established protocols and give stakeholders an opportunity to engage in further discovery and fact finding on specific details proposed in the Application. A hearing would enable the Commission and stakeholders to fully consider the merits of the Application in a public forum with adequate due process. The PD's rejection of the Application deprives the public of the opportunity to fully assess Sunnova's proposal and consider the potential benefits and positive impacts of the microutility model for new residential communities towards the achievement of California policy goals.

To effectively fulfill its mandate to serve the public interest, the Joint Respondents urge the Commission to provide stakeholders with an adequate public forum to fully consider the details and merits of the Application. We request that the Commission issue a revised Decision granting a public hearing on this matter.

***The PD fails to acknowledge any of the support for the Application or the potential benefits that could be realized by the state of California.***

The Joint Respondents are committed to advancing community microgrids because of the opportunities these local energy systems offer to achieve decarbonization, energy equity, resilience, grid reliability, and customer empowerment in the rapidly transforming clean energy sector in California. As outlined in the Sunnova Application and by multiple parties in their responses, community microgrids can provide numerous benefits to communities across California, as well as to ratepayers and the electricity

system.<sup>5</sup> The PD fails to acknowledge any of these potential benefits and positive impact of community microgrids or the opportunities that the Application presents to create a more robust regulatory framework for microutilities that will advance many important state policy goals.

Furthermore, the PD does not acknowledge any of the supporters of Sunnova's Application – of which there were more than a dozen different stakeholders representing diverse perspectives and interests across California– or consider any stakeholder arguments in support of granting a hearing. The PD focuses exclusively on the protests and motions against the Application and completely ignores the comments made in support of the Application that indicate the proposal is in the public interest and there is significant customer demand for these types of projects.<sup>6</sup> The PD clearly and inappropriately weights the comments of the protestors above those submitted by the supporters.<sup>7</sup> As written, the PD does not reflect an accurate record of the facts or the broad base of support for the Application.

On the contrary, based on the initial comments in support of the Application, the Commission should conclude that *a public hearing is warranted* because there is considerable public interest in community microgrids. The current PD ignores arguments from supporters that *the Application is in the public interest*. As such it is an affront to the diverse set of stakeholders that supported the Application, many of whom have limited resources to engage in Commission proceedings. The PD's imbalanced discussion of the Application's responses is quite concerning to the Joint Respondents, as it such an uneven response implies that the Commission is not according fair and equal consideration to all stakeholder input on the record.

***The Commission is not sufficiently addressing microgrid commercialization or creating clear regulatory pathways for the type of community microgrids proposed in the Application.***

The PD states that, among other reasons, the Application should be dismissed because “(1) the Commission should not consider SCMC's Application before a regulatory framework for multi-customer microgrids is developed in Rulemaking 19-09-009; (2) in Decision (D.) 21-01-018, the Commission rejected the same proposal to rely on the microutility statute that SCMC proposes...”<sup>8</sup> Rulemaking R.19-

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<sup>5</sup> See Joint Respondent Comments at pg. 2-5

<sup>6</sup> Supporters include 350 Bay Area, California Energy Justice Alliance, California Energy Storage Association, California Solar & Storage Association, Center for Biological Diversity, Clean Coalition, Local Government Sustainable Energy Coalition, Microgrid Resources Coalition, Peninsula Clean Energy Authority, Reclaim Our Power: Utility Justice Campaign, Solar Energy Industries Association, Sonoma Clean Power Authority, The Climate Center, Vote Solar, World Business Academy, and Zero Net Energy Alliance. Peninsula Clean Energy Authority and Sonoma Clean Power Authority joined the other organizations in support of holding a hearing to consider the Application.

<sup>7</sup> PD at pg. 3 only lists the names of respondents at the beginning. Reclaim Our Power and California Environmental Justice Alliance are only mentioned at the end of the PD at pg. 22. There is no reference to or analysis of any of the supporting arguments made by respondents in the PD.

<sup>8</sup> PD at pg. 8

09-009 was created pursuant to SB 1339 (Stern, 2018), which directed the Commission to facilitate the commercialization of microgrids and create separate rates and tariffs for microgrids.<sup>9</sup>

The Joint Respondents disagree with the PAO that this Application should be dismissed without a hearing and that Sunnova and other stakeholders should be made to wait until the Commission finishes the rulemaking on microgrids.<sup>10</sup> SB 1339 was signed almost five years ago, and R.19-09-009, which the Commission opened a year later, has been ongoing for nearly four years and is nowhere close to meeting its statutory objectives, much less creating a comprehensive regulatory framework for multi-customer microgrids. There is no regulatory pathway or clear timeline that would provide market certainty for communities and developers to fulfill the intent of SB 1339 and build projects of the nature contemplated in the Application.<sup>11</sup> The timeline and schedule of activities in the scoping memo on Track 4 phase 2 contemplating the development of a “multi-property tariff” has been completely abandoned by the Commission and there is no indication of when those scoped activities will resume.<sup>12</sup> Furthermore, there is no indication that the Commission would ever address a regulatory framework for “multi-customer microgrids” or community microgrids specifically built for new home residential master-planned communities, as proposed by Sunnova in this Application.

Further, the PAO Motion and PD misconstrue D.21-01-018 and do not accurately portray the Commission’s determination, or lack thereof, on microuilities in the R.19-09-009 rulemaking. That Decision makes a single statement in reference to the Track 2 Staff Concept Paper, which opined on how microgrids could be regulated as microuilities.<sup>13</sup> This sentence in D.21-01-018 was stated in the context of evaluating Electric Rule 18 changes and Public Utilities Code Section 218, not as part of any distinct evaluation of microuilities. The Commission did not thoroughly examine or make any clear determinations on the microuility concepts outlined in the Staff Concept Paper. It simply stated in one terse sentence that it rejects “the assertion that the Commission could exempt ‘microuilities’ from requirements generally applicable to electrical corporations.”<sup>14</sup> Contrary to the PAO’s and the PD’s assertions, D.21-01-018 does not evaluate, accept, or reject any specific *proposal* on microuilities.

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<sup>9</sup> SB 1339 (Stern, 2018) and Public Utilities Code Section 8371(d)  
[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB1339](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1339)

<sup>10</sup> Public Advocates Office Motion to Dismiss at pg. 2-3

<sup>11</sup> SB 1339 (Stern, 2018) Section 1(e)

<sup>12</sup> R.19-09-009 Track 4 Scoping Memo issued August 17, 2021 sets forth timeline of 2022 activities and revised Scoping Memo Resetting Track 4 issued December 17, 2021 delays schedule by approximately six months. The schedule of activities never materialized and there has been no updated timeline for Track 4 as of March 2023. See also R.19-09-009 email communications between Tam Hunt of Green Power Institute and Administrative Law Judge Colin Rizzo on October 7-8, 2022. GPI requests an updated timeline for parties that ALJ Rizzo fails to provide in his response. GPI sent another follow up email on December 27, 2022 that ALJ Rizzo never responded to.

<sup>13</sup> Track 2 Staff Concept Paper at pg. 100-101

<sup>14</sup> D.21-01-018 at pg. 33

Indeed, Sunnova is requesting to become an electrical corporation with this Application, so the logic follows that the request to be considered a microutility is reasonable and properly before the Commission. The existence of R.19-09-009 does not preclude the Commission from granting a hearing to consider this particular Application, especially when there is so much uncertainty surrounding the timeline, implementation, and completion of scoped activities in that rulemaking. Similarly, a single sentence referencing microutilities in D.21-01-018 does not preclude the Commission from evaluating Sunnova's distinct proposal to become a microutility under this Application.

If the Commission were adequately addressing microgrid commercialization pursuant to SB 1339 and creating clear regulatory pathways for community microgrids in a timely manner, the Sunnova Application may not have needed to be submitted before the Commission at present. However, given the status of the rulemaking and the significant differences in scope between the rulemaking and the specific proposal in the Application, the mere existence of R.19-09-009 does not provide sufficient grounds for dismissal.

***Approval of the PD as written would represent a missed opportunity for the state of California and set a bad policy precedent with adverse national implications.***

As written, the PD would dismiss this innovative and groundbreaking application by a leading clean energy company looking to provide high quality electric service to new home communities in alignment with and furtherance of numerous California state policy objectives: decarbonization, building electrification, community resilience, grid modernization, energy affordability, environmental justice, customer choice, and more. Approving the PD and dismissing the Application without a public hearing would constitute a critical missed opportunity for the State of California to showcase its national and global leadership in innovation and progressive clean energy policy, as well as depriving new residential communities in California of a replicable pathway for realizing the benefits of community microgrids envisioned in SB 1339.

The Application provides a venue for stakeholders to seriously consider a new regulatory framework for community microgrids, pilot this novel concept in the state of California, and validate the numerous benefits and economies of scale that can be realized with community microgrids. The Application could spur a more community-centric approach to modernizing the electric system that will meet our collective 21<sup>st</sup> century energy needs and policy goals. In particular, in the context of California's urgent need to build affordable housing across the state, the microutility model proposed by SCMC could be an effective way to encourage investment and accelerate the design and implementation of affordable housing projects.



Conversely, approving the PD and dismissing the Application without a hearing would indicate to the private sector that new market entrants are not welcome in California and discourage them from investing private capital, building innovative new projects, or creating new green jobs in the state. Especially in the context of the stalled microgrid proceeding (R.19-09-009) it would indicate to California customers and communities that the Commission has no sense of urgency in solving the significant and widespread challenges with power outages that plague our communities and does not support efforts by customers, communities, and third parties to build local clean energy resilience. At a time when the impacts of climate change continue to grow in frequency, severity and unpredictability, and are especially devastating for frontline and vulnerable communities, dismissing the SCMC application would foreclose an opportunity for the Commission to advance California's national leadership where it is most urgently needed.

### **Conclusion**

The Joint Respondents appreciate the opportunity to provide these comments and considerations. California should use this Application as an opportunity to showcase its progressive energy policy leadership to the rest of the U.S. and advance the critically important national and global conversation on community microgrid policy. The Commission should reject the PD and grant the Application a public hearing to fully consider the merits and key details of the proposal with interested stakeholders.

Respectfully Submitted,

/s/

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