June 11, 2025
Energy Division
Tariff Unit
California Public Utilities Commission
505 Van Ness Avenue, Room 4004 San
Francisco, CA 94102

Re: Clean Coalition Protest of Draft Resolution E-5401: Southern California Edison Company Microgrid Incentive Program Advice Letter 5119-E with Supplement AL 5119-E-A, AL 5119-E-B and AL 5119-E-C, and Adoption of New Microgrid Incentive Program Rules for all Local and Tribal Government Applicants.

Dear Energy Division Tariff Unit,

Introduction

According to the California Public Utilities Commission ("the Commission") General Order ("GO") 96-B, the Clean Coalition submits this response to Draft Resolution E-5401: Southern California Edison ("SCE") Company Microgrid Incentive Program ("MIP") Advice Letter ("AL") 5119-E with Supplement AL 5119-E-A, AL 5119-E-B and AL 5119-E-C, and Adoption of New MIP Rules for all Local and Tribal Government Applicants.

SCE AL 5119-E was submitted on October 11, 2023, with SCE's proposed Microgrid Operating Agreement ("MOA") and was supplmented with AL 5119-E-A, 5119-E-B, and 5119-E-C. Resolution E-5401 adopts thee ALs, with additional guidance for participation by local and trbial goverments. The Draft Resolution adopts two options for disbursing the MIP award, either via a schedule of performance milestones to be developed between the local tribe/government and the utility or ten payments everytime 10% of the MIP award funding is spent. In addition, the Draft Resolution adopts Pacific Gas & Electric's ("PG&E") proposal in AL 7042-E-A to include a performance bond requirement for contractors and the Communiy Microgrid Aggregator for 100% of the dollar amount in excess of $100,000 for local/tribal government awardees.[1]

In accordance with General Rule 7.4.2(2), the Clean Coalition is protesting Draft Resolution E-5401. Clean Coalition urges the Commission to eliminate the requirement for a 100% developer performance bond (or a letter-of-credit) for all MIP projects and include *force majeure* clauses to ensure that a developer is not held financially responsible for circumstances that are completely out of its control, such as the potential elimination of the investment tax credit ("ITC"), a natural disaster, another pandemic, extraordinary regulation/legal provisions implemented after the contract is signed, CAISO-queue related interconnection issues, etc…. *Force majeure* clauses are common in contracts in almost every industry, including the energy industry, to acknowledge that even having the intention, expertise, and cooperation needed to successfully deploy a project may not always be sufficient when uncontrollable circumstances occur.[2]

Every party involved in a Community Microgrid project must navigate the risk associated with deploying a complex system, including developers. A developer can only fulfill its role, and must

[1] Draft Resolution E-5401, at p. 12.
[2] https://www.investopedia.com/terms/f/forcemajeure.asp, https://legal.thomsonreuters.com/blog/force-majeure/, https://www.venable.com/insights/publications/2020/04/five-interesting-force-majeure-cases-from.

rely on other involved parties for a successful deployment. Consequently, forcing the developer to shoulder the full financial buden makes it less likely that MIP projects will be successfully deployed, not more likely (as the Commission intends).

Background

The Clean Coalition is a nonprofit organization whose mission is to accelerate the transition to renewable energy and a modern grid through technical, policy, and project development expertise. The Clean Coalition drives policy innovation to remove barriers to procurement and interconnection of distributed energy resources ("DER")—such as local renewables, demand response, and energy storage—and we establish market mechanisms that realize the full potential of integrating these solutions for optimized economic, environmental, and resilience benefits. The Clean Coalition also collaborates with utilities, municipalities, property owners, and other stakeholders to create near-term deployment opportunities that prove the unparalleled benefits of local renewables and other DER.

Discussion

Clean Coalition supports making the MIP more acccessible to local goverments, especially tribal government and disadvantaged communities. As the Draft Resolution notes, these communities "often lack access to flexible capital, may not carry distrecionary reserves, and face legal/proedural limitations associated with incurring financial risk."[3] However, the manner in which the Draft Resolution reduces risk for local government endangers the viability of the program as a whole by by shifting all risk to the contractors developing these projects. This is also a concern for developer-led projects, where a local or tribal government is not the main awardee, since collateral equivalent to the MIP award is also required. Community Microgrids remain complicated and long-lead time projects,[4] with many moving parts that are not solely in the control of a developer/contractor. Even with every party (developer, local government, utility) extremely invested in moving these project forward in a responsible manner, a number of uncertainties and bottlenecks exist. Requiring a 100% performance bond will make it far more difficult to find a contractor willing to accept all the risk associated with developing a MIP project. No one wants to see a developer or local government choose not to participate after an application has been awarded MIP funds because overly-stringent and onerous financial requirements intended to protect the ratepayers hamstring a project before it can ever get off the ground.

This is an issue that the Clean Coalition raised with Energy Division staff months ago as they worked to develop this Draft Resolution. A balance is needed to protect ratepayer funds while ensuring that sufficient flexibility exists to make the MIP a viable program; the current structure and proposal in Draft Resolution E-5401 does not achieve a balance at all. The Commission risks shifting the MIP from a granting program to one that resembles recourse debt, raising the bar for participation to such a high level that it becomes challenging for any developer to justify the risk associated with participating. We raised two MIP implementation issues impeding the successful deployment of Community Microgids under the MIP: the lack of *force majeure* provisions and the onerous letter-of-credit requirement.

[3] *Ibid*, at p. 8.
[4] D. 23-04-034, at p. 79, Finding of Fact #4

1. Coverage for changes to the ITC: One previously unforeseeable circumstance that now seems possible is a reduction or elimination of the ITC, which would substantially change MIP project economics. In such a scenario, it is unclear whether an increase in MIP funds be considered to cover for the loss of federal funds. If not, the Clean Coalition urges the Commission to classify this situation as a *force majeure* event that does not require a clawback of any MIP funds from MIP project developers, as changes to the ITC are obviously beyond the control of the MIP project developers—and not providing this type of relief would prevent many MIP projects from proceeding.
2. Eliminating letter-of-credit ("LOC") requirement and the associated recourse: The newly imposed LOC requirement causes complexity and costs—and it heaps significant financial risk on MIP project developers. Even in cases where the project cannot proceed for reasons that are far more in the control of the utilities, like in the case of interconnection issues, the developer would be held financially responsible. This structure resembles recourse debt rather than a grant program designed to produce learnings and enhance resilience in disadvantaged communities. If financing becomes a liability rather than a support mechanism, it will ultimately reduce the likelihood of successful MIP project deployments.

The Draft Resolution notes, "Staff have observed that the financial risks of the development period performance assurance and the operating period performance assurance could lead potential government grantees to forfeit their award,"[5] and concludes, "These requirement are **particularly burdensome** for public agencies [emphasis added]…"[6] While these quotes center around the needs of local goverments, there is also a clear acknowledgement that the requirements are also burdensome for non-government entities. The greatest impact from 100% performance bond requirements for all projects will be on the disadvantaged and rural communities who desparately need the benefits of Community Microgrids—resilience, reliability, and clean energy—and may not receive any due to the burden of financial risk on contractors leading to project cancellations. The Commission acknowledged this in D. 21-01-018, stating, "we agree… that without increased resiliency, the burden of extended power shutoffs will continue to fall most heavily and inequitably upon "a small number of highly impacted counties."[7] Rather than promoting equity and protecting ratepayers, shifting all financial risk to the developer will actually perpetuate inequities by failing to alleviate the burden of outages on disadvantaged and rural communities. Also in D. 21-01-018, the Commission clarified that MIP projects are research projects that will produce regulatory and technical lessons learned that will benefit all ratepayers.[8] As far as the Clean Coalition is aware, no other research grant (such as EPIC projects) include a 100% performance bond requirement. Requiring all MIP project developers to manage 100% of the financial responsibility will only serve to severly limit the likelihood of success before these projects every get off the ground.

For these reasons, we urge the Commission to reject the current Draft Resolution and approve a version that removes the 100% performance bond requirement that is being unfairly imposed on developers for all projects and includes *force majeure* provisions.

Conclusion

[5] Draft Resolution E-5401, at p. 8.
[6] *Ibid*, at p. 8-9
[7] D. 21-01-018, at p. 60.
[8] *Ibid*, at p. 64.

The Clean Coalition respectfully submits this comment letter on Draft Resolution E-5401 and urges the Commission to remove the 100% LOC requirement for all projects and include reasonable *force majeure* provisions. We look forward to continuing the dialogue on the most effective ways to enable Community Microgrid deployments under the MIP, while protecting ratepayer interests.

Respectfully,

/s/ BEN SCHWARTZ

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