

August 16, 2023

Commissioner Genevieve Shiroma  
California Public Utilities Commission  
505 Van Ness Ave, 4<sup>th</sup> Floor  
San Francisco, CA 94102

**RE: R.19-09-009: Joint Party concerns about Assigned Commissioner’s July 18, 2023 Track 5 Scoping Memo and Ruling**

Dear Commissioner Shiroma,

The Joint Parties, consisting of The Climate Center, Green Power Institute, Vote Solar, Local Government Sustainable Energy Coalition, and the Center for Biological Diversity, are writing to express our serious concerns about the Track 5 Scoping Memo and Ruling (“scoping memo”) and to offer recommendations for improving the process it outlines.

The scoping memo represents, in our view, an unacceptable backtracking by the Commission regarding stakeholder participation and transparency. The scoping memo eliminates, without explanation, crucial stakeholder participation processes that were included in the Assigned Commissioner’s prior scoping ruling on the same topic, issued on December 17, 2021, but never implemented. By eliminating these processes, the new scoping memo conveys the clear impression that the Commission has largely determined the outcome of Track 5 and intends to limit stakeholder participation to ensure that no alternatives to the IOU and Energy Division proposals will be considered.

These shortcomings of the scoping memo are contrary to the Commission’s oft-stated desire in recent years to enhance party participation, especially by non-traditional and often excluded stakeholders. If the Commission proceeds to implement the Track 5 process as laid out in the scoping memo, it will be detrimental to ratepayers, will shortchange environmental and social justice communities, and will diminish public confidence in the Commission’s dedication to its public interest responsibility.

The Joint Parties therefore urge the Commission to adopt the below modifications to the process and timeline proposed in the scoping memo to restore meaningful stakeholder participation and help the Commission arrive at a broadly supported final decision in Track 5.

**The Joint Parties’ Specific Concerns**

The Track 5 Assigned Commissioner’s Scoping Memo and Ruling, issued on July 18, 2023, after over a year of almost no action in this proceeding despite numerous party requests for continued activity, sets a new schedule for achieving a “microgrid multi-property tariff” (hereafter “tariff”). The memo and ruling directs the utilities to promulgate their draft tariff, to be modeled after PG&E’s Community Microgrid Enablement Tariff (CMET), on October 9, 2023. Subsequently, Energy Division is directed to submit its proposed multi-property tariff on January 22, 2024.

The Joint Parties have four primary concerns about the scoping memo.

## **1. Elimination of opportunities for submission, public discussion, and formal comments on stakeholder proposals.**

The proposed process and timeline allow no opportunity for other parties to submit their proposed multi-property tariffs in this proceeding. The parties to this proceeding have diverse technical expertise regarding microgrids and strong interest in having the Commission adopt a tariff that will be of greatest benefit to ratepayers and Californians more generally, while advancing the directive of SB 1339 to the Commission to commercialize microgrids. If the Commission precludes stakeholder tariff proposals and an adequate process for public discussion of those proposals, the Commission's underlying record for developing its decision will be severely and unnecessarily limited, to the detriment in the decision-making process.

In contrast to this scoping memo, the Assigned Commissioner's prior scoping ruling, establishing a process and timetable for developing a microgrid multi-property tariff, issued on December 17, 2021 and designated as Track 4 Phase 2 of this proceeding, did provide for stakeholder proposals to be submitted and presented for discussion in a public workshop, and for all stakeholders to submit comments and reply comments on the stakeholder proposals, into the record of the proceeding.<sup>1</sup>

The new scoping memo completely eliminates this portion of the process with no explanation, despite there having been a multi-year discussion in various workshops and other venues within this proceeding, expressly about non-utility parties eventually submitting their own proposed tariffs for public discussion and formal written comments, when the Commission formally scoped these issues, as it has now done.

In discussion with Energy Division staff subsequent to the new scoping memo being issued, the Green Power Institute was informed that parties may submit their own tariff proposals concurrently with their comments on the utility proposed tariff, due October 27, 2023. This opportunity is not mentioned in the scoping memo, nor does it allow for public presentation and discussion of stakeholder proposals, nor for all parties to submit informed comments and reply comments on the stakeholder proposals, and is therefore grossly inadequate procedurally, particularly given the importance of this new tariff.

## **2. Elimination of public discussion and formal comments on the guiding principles to adopt for the development of a microgrid multi-property tariff.**

The new scoping memo asks what guiding principles the Commission should adopt for the design of a microgrid multi-property tariff (p. 6) but makes no provision in the process and timeline for public consideration and discussion of guiding principles. To make matters worse, the subsequent ALJ ruling on August 8, 2023 directs the IOUs to draft a microgrid multi-property tariff and specifies the guiding principles the IOUs should follow.<sup>2</sup>

In contrast, the December 17, 2021 scoping ruling on this same subject directed the ALJ to propose guiding principles and invited stakeholders to submit two rounds of comments on the ALJ proposal prior to an ALJ ruling adopting guiding principles. In that scoping ruling, the process to arrive at guiding principles was to precede the submission of tariff proposals. The new scoping memo eliminates this portion of the original ruling with no explanation, and the August 8 ALJ ruling seems to pre-empt the question entirely.

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<sup>1</sup> See December 17, 2021 scoping memo and ruling, pages 9-10. The process and timetable proposed at that time were never implemented by the Commission, and the Commission has provided no communication or explanation to parties regarding the procedural lapse.

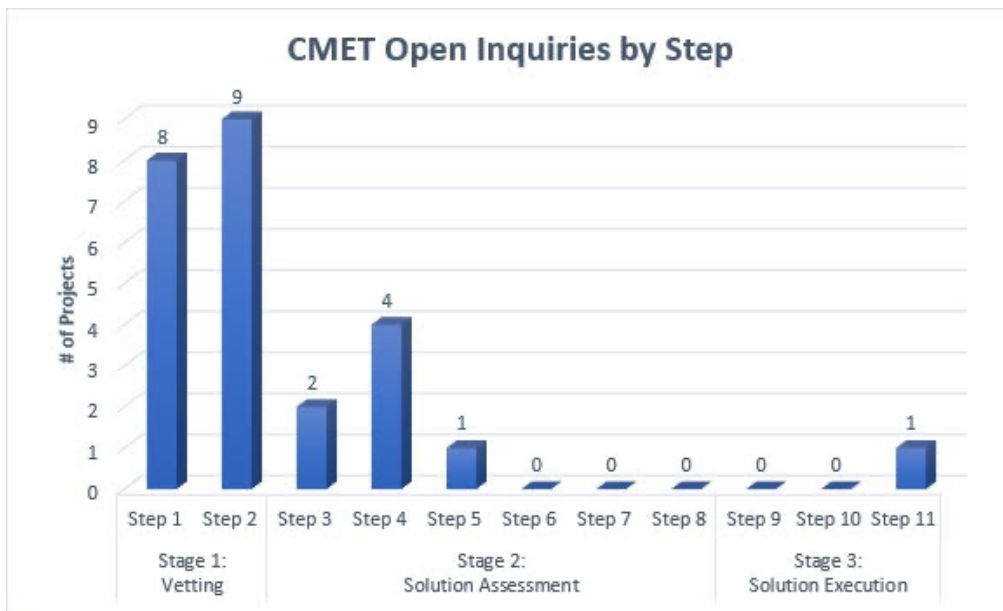
<sup>2</sup> August 8, 2023 ALJ Ruling, pp. 3-4. The ruling lists 6 guiding principles numbered 1 through 7 but omitting number 4.

### 3. Pre-emptive and unjustified designation of CMET as the basis for IOU tariff proposals.

The new scoping memo and ruling requires that the utility proposed tariff must be expressly modeled on PG&E’s CMET. While the memo and ruling lists the requirement to adopt CMET as an issue to be resolved in this track (p. 6), it pre-emptively resolves the question itself, without any discussion and without discussion or feedback from parties, later in the same memo and ruling by directing expressly that utilities base their tariff proposal on CMET (p. 7).

Aside from the procedural concern described above, our substantive concern about constraining IOU proposals to the CMET is the apparent failure of that tariff to spur microgrid development in PG&E territory thus far. There is no information in the memo and ruling about the CMET program track record, which is a disturbing oversight. If the Commission is aiming for success in creating programs that promote microgrids, consistent with the law, it is imperative to empirically assess past programs, particularly when they are the Commission’s chosen model for new programs.

PG&E provided the following data in February 2023 for its CMEP, showing only a single project had passed through to stage 11 in the first two years of program operation, and no others had passed beyond stage 5. The single project to reach stage 11 is the well-known Redwood Coast Airport Microgrid (RCAM) project, which received a \$6 million grant from the CEC and was under development for many years before CMEP was created. It is, accordingly, a quite unique project, and thus far from compelling evidence for the effectiveness of the CMET to enable multi-property microgrid development in California.



The Joint Parties urge the Commission to drop CMET as a requirement for the IOUs or any other parties to use as the basis of tariff proposals, though the IOUs should be allowed to propose it if they wish. At the very least the memo and ruling should include some discussion of why the CMET was chosen as the required basis for the utility proposed multi-property tariff, with supporting data. In previous discussions in this proceeding about CMET and the multi-property tariff the vast majority of party comments were not favorable toward CMET program details or its track record.

#### **4. The Assigned Commissioner’s unexplained decision not to require evidentiary hearing, although the original OIR had preliminarily determined that evidentiary hearings would be needed.**

The memo and ruling also, again with no discussion, rules that no hearing will be required on these issues – though there are numerous substantive issues of fact that are at dispute, including as just discussed whether CMET’s approach is a suitable model for the proposed multi-property tariff, and even though the OIR “preliminarily determined that hearings are required.”

The Joint Parties are submitting this letter to the Commission in part to demonstrate that there are indeed numerous and substantive factual and policy disagreements that weigh in favor of hearings being required.

#### **Recommendations**

The Joint Parties urge the Commission to issue a revised Track 5 Scoping Memo and Ruling, with a process and timeline that restores the activities described above that were included in the process and timeline of the December 17, 2021 scoping ruling. Specifically:

- Begin with the issuance of proposed guiding principles for developing a microgrid multi-property tariff, drafted either by the ALJ or CPUC staff, with a public workshop to discuss the proposal as well as stakeholder proposals, followed by stakeholder comments and reply comments and culminating in a Commission ruling adopting guiding principles. This should occur prior to submission of any tariff proposals and should provide guidance for developing tariff proposals.
- Invite stakeholder tariff proposals to be submitted at the same time as IOU proposals, followed by workshops to fully discuss all proposals, followed by stakeholder comments and reply comments. The IOUs would be allowed to use the CMET as the basis for their proposals if they wish, but neither they nor any other parties should be required to do so.
- Issue a CPUC staff proposal that reflects staff’s synthesis of the various proposals and proposed resolution of open issues, to be discussed in one or more public workshops, followed by stakeholder comments and reply comments.
- A proposed decision would follow the above activities.

Although we are disappointed that the Commission allowed microgrid multi-property tariff development to languish for 19 months after issuing what we believed to be a reasonable December 17, 2021 scoping ruling, we believe that the importance of this matter for the future of microgrid development in California, which the Legislature and Governor Newsom have affirmed they want to advance,<sup>3</sup> warrants taking the time and process that is necessary to get it right.

The Joint Parties estimate that allowing for effective stakeholder participation in Track 5 will extend the timetable to the end of 2024. If the Commission feels that greater urgency is warranted, it should have initiated this proceeding in June 2022 as specified in the December 2021 scoping ruling. At this point, compressing the timetable will only serve to severely constrain stakeholder participation and unduly limit the options that can be explored and evaluated. The signatories to this letter urge the Commission to “get it right” in this track and not rush quickly through a fundamentally flawed process after long periods of inaction.

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<sup>3</sup> Based on the passage and signing of SB 1339 in 2018.

## Conclusion

We urge the Commission revise the Track 5 scoping memo to:

- Allow for public discussion and formal comments on the adoption of guiding principles for tariff development;
- Allow for submission, public discussion and formal comments on stakeholder tariff proposals;
- Eliminate any requirements to utilize CMET as the basis for developing tariff proposals; and
- Present a thoughtful assessment of the need for evidentiary hearings in the scoping memo.

Respectfully submitted,

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Service List: R. 19-09-009