

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

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

Rulemaking 19-09-009

**JOINT PARTIES MOTION
TO AMEND TRACK FIVE SCOPING MEMO AND RULING**

October 6, 2023

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Pursuant to Rule 11.1 of the California Public Utilities Commission’s (CPUC or Commission) Rules of Practice and Procedure, the Joint Parties (Green Power Institute, Center for Biological Diversity, The Climate Center, Microgrid Resources Coalition) respectfully move to amend the Assigned Commissioner’s Track Five Scoping Memo and Ruling in this proceeding, filed on July 18, 2023.

The Green Power Institute is the renewable energy program of the Pacific Institute for Studies in Development, Environment, and Security, a non-profit environmental and social advocacy group. Under the direction of Dr. Gregory Morris, the Green Power Institute performs research and provides advocacy on behalf of renewable energy systems and the contribution they make to reducing the environmental impacts of fossil-based energy systems. The Green Power Institute is located in Berkeley, California.

The Center for Biological Diversity is a non-profit membership organization advancing the conservation of endangered species and the protection of their habitats against the climate emergency. As part of that mission, the Center strives to reduce the environmental impacts of energy policy and development, including greenhouse gas emissions and harm to imperiled plants and wildlife. The Center’s Energy Justice Program advocates for and educates the public about renewable energy, including the need to maximize distributed energy resources and other aspects of the transition from fossil fuels.

The Climate Center is a non profit organization working to rapidly reduce climate pollution at scale. The Climate Center’s Community Energy Resilience Program is working to accelerate development of clean energy resilience in disadvantaged communities that suffer the most from air pollution and power outages.

The MRC is a national association of leading microgrid owners, operators, developers, suppliers, and investors formed to promote microgrids as energy resources by advocating for policy and regulatory reforms that recognize and appropriately value the services that microgrids offer, while

ensuring non-discriminatory access to the grid for various microgrid configurations and business models. The MRC works for the empowerment of energy customers and communities.

I. Motion

A. Overview

The Joint Parties, consisting of the Green Power Institute, the Climate Center, the Center for Biological Diversity, and the Microgrid Resources Coalition, have serious concerns about the current Track 5 Scoping Memo and Ruling (“scoping memo”) and respectfully request that the Commission conform to the proceeding’s December 17, 2021 Track 4 Scoping Memo and improve the process it outlined. We previously described these concerns in a letter to Assigned Commissioner Shiroma on August 16, 2023.

The scoping memo represents, in our view, an unacceptable backtracking by the Commission regarding stakeholder participation and transparency in Track 5. The scoping memo eliminates, without explanation, crucial stakeholder participation processes that were included in the Assigned Commissioner’s Track 4 Scoping Memo (which covered issues now re-scoped for Track 5), issued on December 17, 2021, but never implemented due to unexplained delays. By eliminating these previously-scoped processes, the new scoping memo conveys the clear impression that the Commission has largely determined the outcome of Track 5 already, and intends to now limit stakeholder participation to ensure that no alternatives to the IOU and Energy Division proposals will be seriously considered.

To the contrary, the Commission must adhere to the prior Scoping Memo. It is well settled that the Commission must “resolve [all] *the* issues raised in the scoping memo.”¹ The Commission

¹ Cal. Pub. Util. Code § 1701.5 (emphasis added). The use of the definite article in “the issues” means that the clause refers to all the issues. (*See Frazier v. Pioneer Americas LLC* (5th Cir. 2006) 455 F.3d 542, 546 [holding that, by “using the definite article before the plural nouns” in a statute requiring that “the primary defendants are States,” Congress required that all primary defendants must be States].)

can meet this requirement by granting this motion and issuing a new scoping memo for Track 5.

Importantly, the shortcomings of the scoping memo are contrary to the Commission’s oft-stated desire in recent years to enhance party participation, especially for non-traditional and often excluded stakeholders.² If the Commission proceeds to implement the Track 5 process as laid out in the current 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 request that the Commission grant this motion and amend the process and timeline proposed in the scoping memo to conform to the prior Scoping Memo and restore meaningful stakeholder participation in Track 5.

B. The Joint Parties’ Specific Concerns

The scoping memo, after over a year of almost no action in this proceeding despite numerous party requests for continued activity, set a new schedule for achieving a “microgrid multi-property tariff” (hereafter “tariff”). The scoping memo 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:

a. Elimination of opportunities for party tariff submissions, 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, despite such being discussed expressly in earlier tracks

² See e.g. CPUC Environmental and Social Justice Action Plan, Goal 5, available at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/news-office/key-issues/esj/esj-action-plan-v2jw.pdf>. [“Enhance outreach and public participation opportunities for ESJ Communities to meaningfully participate in the CPUC’s decision-making process and benefit from CPUC programs.”]

of 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 that the Commission work 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 of the decision-making process and in violation of section 1701.5.

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 expressly provide for stakeholder tariff 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.³

Many parties, including many of the Joint Parties, have been eagerly anticipating the opportunity to submit tariff proposals and have been operating under the entirely justified assumption that such proposals would be requested in due course, despite the extreme delays in this proceeding that have not adhered to the schedule stated in the 2021 Track 4 scoping memo.

The current scoping memo eliminates this portion of the process with no explanation, despite 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.

In discussion with Energy Division staff subsequent to the current 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, which comments are due October 27, 2023.

³ 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. See also Appendix 1 comparing these two scoping memos.

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 tariff proposals, as required by the prior Scoping Memo. Accordingly, this opportunity described by staff in a separate communication and not mentioned at all in the scoping memo is grossly inadequate procedurally, particularly given the importance of this new tariff, and given prior scoping and relevant discussions to date.

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

The current 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.⁴

In contrast, the December 17, 2021 Track 4 scoping memo 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 (see Appendix 1 for a comparison of the previous and new scoping memos on these issues). In that scoping memo, 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.

The Commission must adhere to its prior Scoping Memo rather than omitting significant issues integral to public participation in Commission proceedings.

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

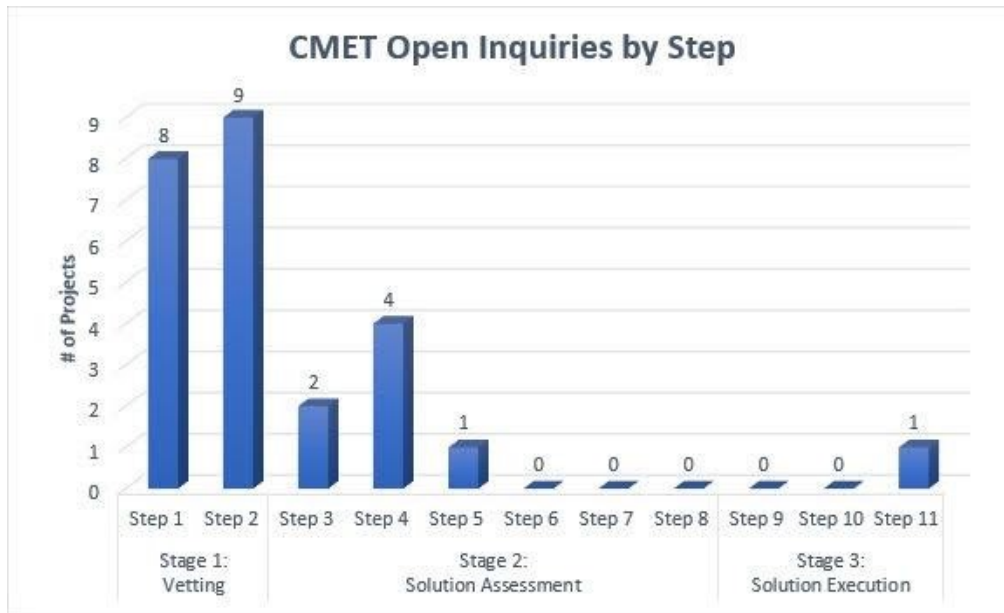
c. Pre-emptive and unjustified designation of CMET as the basis for IOU tariff proposals.

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's requirements, it is imperative to empirically assess past programs, particularly when they are the Commission's chosen model for new programs, to determine what has worked and what has not worked.

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 5.⁵ 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 far from compelling evidence for the effectiveness of the CMET to enable multi-property microgrid development in California.

⁵ GPI has requested more up to date data from PG&E but has received no response after multiple requests. A discovery request is now pending.



The Joint Parties move that the Commission modify the scoping memo 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 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.

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

The scoping memo 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, as discussed herein and in the record, 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.

e. Specific Relief and/or Ruling Requested

The Joint Parties move that the Commission issue an amended Track 5 Scoping Memo and Ruling, with a process and timeline that conforms with the prior Scoping Memo, restoring the activities described above that were included in the process and timeline of the December 17, 2021 Track 4 scoping memo. Specifically, the Joint Parties move that the Commission amend the Track 5 Scoping Memo and Ruling to:

- 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. This process should allow for public discussion and formal comments on the adoption of guiding principles for tariff development;
- 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. Instead, the Commission's amended scoping memo for Track 5 should eliminate any requirements to utilize CMET as the basis for developing tariff proposals;
- 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;
- Present an assessment of the need for evidentiary hearings in the scoping memo, and provide for evidentiary hearings in the proceeding schedule if deemed appropriate; and
- Issue a proposed decision after 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,⁶ warrants taking the time and process that is necessary to “get it right” rather than to rush now – at the expense of procedural adequacy.

The Joint Parties estimate that allowing for effective stakeholder participation in Track 5 will extend the timetable to the end of 2024 or early 2025. 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.

II. Conclusion

For the foregoing reasons, Joint Parties request that the Commission grant this motion with the specific relief requested. Pursuant to the Commission’s Rules of Practice and Procedure 11.1(f), Joint Parties also request the opportunity to reply to responses to this motion.

Dated: October 6, 2023, at Berkeley, California.

Respectfully Submitted,



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⁶ Based on the passage and signing of SB 1339 in 2018.

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Appendix 1. Comparison of Track 4 and Track 5 scoping memos.

Original [Track 4 Ph 2 Scoping Memo](#) issued Dec 2021:

ALJ Ruling: Draft Multi-Property Microgrid Tariff Guiding Principles	June 2022
Opening Comments on Multi-Property Microgrid Tariff Guiding Principles, filed and served	July 2022
Reply Comments on Multi-Property Microgrid Tariff Guiding Principles, filed and served	July 2022
ALJ Ruling: Guidance to Parties on Submittal of Microgrid Multi-Property Tariff Proposals	August 2022
Stakeholder Proposals for Microgrid Multi-Property Tariff, filed and served	August 2022
Public Workshop: Stakeholder Presentation on Microgrid Multi-Property Tariff Proposals	September 2022

Event	Date
Opening Comments to Stakeholder Microgrid Multi-Property Tariff Proposals, filed and served	September 2022
Reply Comments to Stakeholder Microgrid Multi-Property Tariff Proposals, filed and served	October 2022
ALJ Ruling with Energy Division Staff Proposal for Microgrid Multi-Property Tariff	Late October 2022
Energy Division Public Workshop on Multi-Property Tariff	November 2022
Opening Comments to Energy Division Staff Proposal for Microgrid Multi-Property Tariff, filed and served	November 2022
Reply Comments to Energy Division Staff Proposal for Microgrid Multi-Property Tariff, filed and served	November 2022
Proposed Decision	Released in accordance with the Rules

[Track 5 Scoping Memo](#) 2023:

EVENT	DATE
PG&E Submittal of its Community Microgrid Enablement Tariff into the Record	July 31, 2023
ALJ Ruling: Ordering PG&E, SCE, and SDG&E to Develop and Submit a Pro-Forma Standard Multi-Property Microgrid Tariff, and Any Necessary Utility-Specific Deviations, that is Based on PG&E's Community Microgrid Enablement Tariff, into the Record	August 9, 2023
PG&E, SCE, and SDG&E Submit Pro-Forma Standard Multi-Property Microgrid Tariff, and Any Necessary Utility-Specific Deviations, into the Record	October 9, 2023
Opening Comments, limited to no more than 15 pages, to IOU Pro-Forma Standard Multi-Property Microgrid Tariff, and Any Necessary Utility-Specific Deviations, filed and served	October 27, 2023
Reply Comments, limited to no more than 10 pages, to IOU Pro-Forma Standard Multi-Property Microgrid Tariff, and Any Necessary Utility-Specific Deviations, filed and served	November 10, 2023
ALJ Ruling: Energy Division Staff Proposal on Multi-Property Microgrid Tariffs	January 22, 2023
Energy Division Public Workshop on Energy Division Staff Proposal on Multi-Property Microgrid Tariffs	February 5, 2024
Opening Comments to Energy Division Staff Proposal on Multi-Property Microgrid Tariffs, filed and served	February 19, 2024
Reply Comments to Energy Division Staff Proposal on Multi-Property Microgrid Tariffs, filed and served	March 11, 2024