

MINUTES OF MEETING OF APRIL 5, 2006

The Sacramento Local Agency Formation Commission met this fifth day of April, 2006, at 5:30 P.M. in Board Chambers, Sacramento County Administration Center, 700 H Street, Sacramento, California.

PRESENT: Christopher Tooker, Chair; Charles Rose, Vice Chair; Commissioners Elliot Mulberg, Susan Peters, Illa Collin, Kevin McCarty.

ABSENT: Sophia Scherman, Robert King Fong.
Not Present: Steve Miklos, John Jachens, Gay Jones.

STAFF: Peter Brundage, Executive Officer; Donald Lockhart, Assistant Executive Officer; Nancy Miller, Commission Counsel; and Marilyn Ann Flemmer, Commission Clerk.

CONSENT CALENDAR

The Chair called the meeting to order at 5:30 PM and asked the Clerk to call the roll. Elliot Mulberg led the Pledge of Allegiance. A motion to approve the Consent Calendar [Minutes of March 1, 2006 and Claims dated March 31, 2006] was moved by Commissioner Rose, seconded by Commissioner Collin and unanimously approved.

SMUD SPHERE OF INFLUENCE AMENDMENT and ANNEXATION OF TERRITORY IN YOLO COUNTY (05-05) ***Certify Final Environmental Impact Report***

Executive Officer Brundage gave opening remarks regarding presentations to be made and introduced Tom Bailey, URS Corporation, LAFCo Consultant. Commission Counsel then stated, "The purpose of this hearing is to certify the Final Environmental Impact Report; to review comments we have received and open the public hearing to comment on the FEIR. Our job is to ensure the FEIR has been done according to CEQA law and that it reflects the independent judgment of your Commission. Public comments should be on the EIR, not the proposed project."

Mr. Tom Bailey, URS Corporation, LAFCo Environmental Consultant, addressed the Commission. Mr. Bailey gave a Power-Point presentation, attached hereto and made a part hereof. The presentation reviewed the findings and proposed mitigation measures of the Final Environmental Impact Report for the proposed SMUD annexation of territory in Yolo County. Mr. Bailey answered Commission questions. There was Commission discussion. [Commissioner Susan Peters arrived at 6:45 PM.]

Public Hearing Opened

Chairman Tooker then opened the Public Hearing on the Final Environmental Impact Report by calling the first speaker, Arlen Orchard.

Arlen Orchard, General Counsel, Sacramento Municipal Utility District, addressed the Commission. Mr. Orchard thanked Commission staff for their work and urged certification of the FEIR. In response to Commissioner Collin's air quality questions, Mr. Orchard addressed the vehicle emissions of SMUD equipment. He further stated that SMUD will have "Trouble Shooters" in Yolo County.

Mr. Michael Zischke, representing Pacific Gas & Electric Company, then addressed the Commission. Mr. Zischke stated his concern that the FEIR deferred a number of issues not studied and stated, "no response required" to others. In his opinion, "these are inappropriate CEQA proceedings," he stated, "and do not give your Commission's review proper legal standing." Mr. Zischke stated, "The project is the whole of the action. The action is the whole ball of wax and that includes transmission line and substation. Once the decision is made by LAFCo, it can never go back to a 'no project' or other alternative. The part of the story this FEIR does not tell does not excuse the agency from analysis; deferring is no excuse, tiering to streamline subsequent reviews is no excuse," stated Mr. Zischke. He further stated, "No specific site surveys were made under biological resources; that is insufficient information to support the conclusion." He also addressed air quality and stated "change was not evaluated." Mr. Zischke then discussed energy reliability and stated that FEIR statements do not evaluate the long term energy reliability of SMUD.

Commission Counsel stated the Commission should certify FEIR tonight however, she may instruct the Commission to postpone in order to respond to these comments. "The public comment period closed February 21, 2006. These comments are late. We need enough time to respond to late comments before the April 20, 2006, Commission hearing," stated Ms. Miller.

Mr. Thomas Enslow, Coalition of Utility Employees (CUE), addressed the Commission. Mr. Enslow distributed written Comments on the Final Environmental Impact Report for the SMUD (05-05) proposal. Mr. Enslow's comments reviewed some of the ten points of his written document that is attached hereto and made a part hereof. Mr. Enslow stated that the FEIR is inadequate; its failure to address pollution, air quality, operation of the Cosumnes Power Plant, and mitigation measures were his main concerns.

Honorable Mariko Yamada, Supervisor, Yolo County, addressed the Commission. Ms. Yamada stated she appreciated the Commission's staff work and was pleased with the FEIR which she urged the Commission to certify. "The Yolo Board of Supervisors is supportive of the quest for public power which was initiated in Davis several years ago," concluded Ms. Yamada.

Mr. Bill Knox, Chair, Energy Task Force Seeking SMUD Annexation, addressed the Commission. Mr. Knox briefly stated that he believes, "this is a good EIR" and he urged the Commission to certify it.

Mr. Salvatore J. Ali, Herald Resident, addressed the Commission. Mr. Ali stated he is most unhappy with the Cosumnes Power Plant in Herald. He said he and his neighbors have complained about the noise to SMUD on numerous occasions and the SMUD Board and staff have been unresponsive to their complaints. "We have been treated with disdain. There are four houses within a mile of the plant; there is severe noise pollution," stated Mr. Ali. He further said that, "it is possible to use technology to mitigate noise." He concluded by saying he cannot get a SMUD Board member to call him. He suggested LAFCo disapprove the FEIR.

Mr. Kurt Rodacker, Organization of SMUD Employees (OSE), addressed the Commission. Mr. Rodacker stated OSE is an independent organization and one of the two organizations of SMUD employees in Sacramento County. "The organization would like to recommend your endorsement of the FEIR and the annexation," stated Mr. Rodacker.

Honorable Ray Jones, Former Mayor of West Sacramento, addressed the Commission. Mr. Jones raised questions about the district-wide vote. He also suggested that the cities of Woodland, Davis, West Sacramento, and Yolo County vote separately on the proposed SMUD annexation. Commission Counsel responded by stating that the suggestion was not legally possible because SMUD submitted an application for an annexation that comprises the total proposal territory. To consider such an action would consist of creating an entirely new proposal.

Mr. Stanford Kozlen, Board Member, Carmichael Water District, addressed the Commission as a private citizen. Mr. Kozlen stated he was concerned that eminent domain litigation be done properly. "I would be much happier if Yolo County people were initiating their own process. I think there could be some strong defenses if the work is not done properly and the proper people are not engaged." Mr. Kozlen concluded by stating that litigation regarding this proposal will be a long and expensive process.

Honorable Neal Peart, Councilman, City of Woodland, addressed the Commission. Mr. Peart addressed the issue of the annexation as growth inducing. He stated Woodland is not planning any additional zoning because of the SMUD annexation. "We are into controlling, or restricting, growth. New businesses coming to Woodland will benefit but we are concerned with the savings our current businesses will receive from the proposal." He concluded stating he was happy with the GES report and would like the Commission to move forward.

Mr. Kurt Overmeyer, City of West Sacramento, addressed the Commission. Mr. Overmeyer stated that the FEIR adequately addresses our concerns. "We believe it is sufficient under CEQA and we think it is adequate. We encourage you to certify."

Ms. Cari Seymour, Sheldon Community Association, addressed the Commission. Ms. Seymour stated that in 1999, the PUC revised the tree pruning restrictions and SMUD engaged in extensive tree pruning in the Sheldon area. The residents were concerned; they met with SMUD and were impressed with their response. SMUD's efforts to help the community preserve its tree canopy were done with care and integrity.

Mr. Dean Newberry, Coalition for Local Power, Davis, addressed the Commission. Mr. Newberry addressed the issue of mitigation of environmental impacts stating they were adequate and valid. He urged the Commission to move forward and certify the FEIR.

Mr. Bob Weir, Director, Public Works Department, City of Davis, addressed the Commission. Mr. Weir stated the City of Davis has reviewed the EIR and finds it sufficient and complete and urges Commission certification tonight.

Mr. David Thompson, City of Davis, addressed the Commission. Mr. Thompson stated "The value of SMUD serving the proposal territory would impact the area favorably with lower costs of energy and the potential for more job creation. 26-30% of the people leave the county every day to work elsewhere. We would have cleaner air if more people were not traveling."

Mr. Dan Berman, Coalition for Local Power, Davis, addressed the Commission. Mr. Berman stated, "The EIR was well done. SMUD would be a better energy partner for the citizens in Yolo County. PG&E has charged between 8 and 120% more than SMUD. SMUD has an A-1 credit rating and PG&E has a BAA-3 credit rating. SMUD is greener; they have happier customers, residential and business customers."

Defer Certification of FEIR to April 20, 2006

Commission Counsel then stated that in response to Mr. Zischke's comments, she recommended the Commission defer certification of the FEIR to April 20. Ms. Miller stated she believed staff should review the concerns presented in public testimony. Regarding deferral, she stated, "with regard to transmission lines and sub stations---these issues are not something we can do anything about. LAFCo does not have land use authority." There was Commission discussion regarding tiering EIR's. Commissioner Rose moved continuation of certification of the FEIR of the SMUD proposal to the date of April 20, 2006. The motion was seconded by Commissioner Collin and unanimously passed.

Commission Counsel then introduced outside Counsel, Mr. Steven Greenwald, Davis Wright, Tremaine, who presented his findings regarding Eminent Domain Valuation Methodologies. Mr. Greenwald reported on the *Assessment of PG&E and SMUD Proposals Regarding Valuation Methodologies Applicable to the Condemnation of Public Utility Facilities*. Mr. Greenwald reviewed the various factors that determine valuation that are presented to a court and then stated, "There is no one methodology by which a court will determine value in an eminent domain condemnation proceeding. A

court will look at the facts that are presented and exercise independent judgment." Mr. Greenwald then answered Commission questions. Mr. Greenwald's Memorandum dated March 29, 2006, is attached hereto and made a part hereof. There was Commission discussion.

Peter Brundage then introduced Mr. Glenn Walker, GES, Engineers and Appraisers, who gave a Power Point presentation to the Commission. Mr. Walker reviewed the economic impacts relative to cost of service and service reliability of both SMUD and PG&E. His Power Point presentation is attached hereto and made a part hereof. Mr. Walker answered Commission questions. There was Commission discussion.

The Public Hearing on the SMUD FEIR was briefly interrupted to give the Court Reporter a break. The Commission turned to two other items on the Agenda.

LAFCO PROPOSED FY 2006-07 BUDGET

The Executive Officer stated he has proposed a status quo budget for FY 2006-07. Mr. Brundage stated the budget will be forwarded to those jurisdictions which contribute to LAFCo's budget and placed on the Commission's Agenda for April 20, 2006, final action. On a motion by Commissioner Rose, seconded by Commissioner Collin, the Commission approved adoption of the Proposed Budget for FY 2006-07.

There were no further reports except for item No. 9:

Special District Advisory Committee Terms of Office Update

Mr. Lockhart stated the Special District Advisory Committee desires to create terms of office for the members that are overlapping; to do so requires that some of the applicants receive a one year term and some a two year term. Commissioner Mulberg moved that of the 15 applicants, the eight qualified applicants should be confirmed with two year terms; the other seven should be confirmed with one year terms provided they submit proof of District support within thirty days. Commissioner Rose seconded the motion which was unanimously passed.

CONTINUATION OF SMUD PUBLIC HEARING

Mr. Dan Richard on behalf of Pacific Gas & Electric Company, addressed the Commission. Mr. Richard responded to Glenn Walker's comments regarding Economic and Level of Service Impacts Resulting from the Annexation by SMUD of PG&E's Service Territories in Yolo County. Mr. Richard stated, "There are significant errors and omissions in this report. This document makes it appear to be a win-win situation; when it's really a maybe--maybe not situation." Mr. Richard stated the issue of valuation will proceed through court; it will be lengthy and adversarial. Commissioner Collin asked Mr. Richard if he was going to present different information to the court than that which was presented to LAFCo. Mr. Richard answered "No. But the analysis leaves a lot of the information, ground rules, out." Mr. Richard addressed a high/ low and in-between estimate in the court room. Then stated that, "If you did end up with \$200 million higher

than the \$110 million your consultant just talked about, it would wipe out all these benefits he just talked about." Mr. Richard stated Mr. Walker made a complete change to PG&E's rate forecast ("PG&E's rate increases are less than the rate of inflation"). Mr. Richard stated Mr. Walker inflated rates but not value. "Unjustified tinkering leads to misleading information." Mr. Richard addressed the difference between capital costs for meeting new capacity. "SMUD has promised it will not use any low cost resources. They are going to have to go out on the open market." SMUD's cost to buy energy will be higher. "If you assume their capital cost is not 50%, this benefit goes to zero in twenty years," stated Mr. Richard. "Nobody can project power costs with that accuracy. We say the system costs \$516 M, he says \$110 M. RW Beck said \$84 M. Your common sense tells you that the number is somewhere in-between." Mr. Richard then spoke of PG&E sales, replacement costs and depreciation costs. He concluded stating, "There are risks that are not being presented to you. We believe that the biggest risk facing Sacramento and Yolo County is this; despite currently lower SMUD rates, no one knows that will be true in the new service territory. SMUD will be exposed to the vagaries of the market. PG&E is less vulnerable to gas prices. If SMUD suffers from higher gas costs, there will be no rate to stretch out."

Mr. Arlen Orchard, General Counsel, Sacramento Municipal Utility District, addressed the Commission. Mr. Orchard stated, "PG&E did not present this information to me or to Mr. Walker for his use. We have heard nothing new today. The two reports, Greenwald and Walker, are independent expert analyses of the proposal. Regarding Mr. Walker's report, this is the first time PG&E has put their cards on the table. Mr. Walker validates SMUD's analysis by RW Beck. Mr. Walker finds annexation will provide benefits for Yolo and Sacramento County customers. It puts to rest the "he-said he-said" between SMUD and PG&E."

Three SMUD Board Members were present; Commissioner Collin introduced them: Bill Slaton, Susan Patterson, Genevive Schroma.

The meeting was then adjourned at 11:10 P.M.

Respectfully submitted,

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION

Marilyn Ann Flemmer
Commission Clerk

MAF
(Minutes April 5, 2006)
Attachments