

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION
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November 2, 2005

TO: Sacramento Local Agency Formation Commission

FROM: Peter Brundage, Executive Officer

RE: **UPDATE: SMUD Sphere of Influence Amendment and Proposed Annexation of Territory in Yolo County (05-05)**

RECOMMENDATION

1. Receive and file this report.
2. Authorize your Executive Officer to enter into contracts, as necessary, to hire consultants to analyze, review and evaluate the Proposed SMUD Sphere of Influence Amendment and Annexation of Territory in Yolo County (05-05). Said contracts will be reviewed by Commission Counsel and all costs will be fully reimbursed by the applicant.

Background Information

I encourage your Commission to carefully study the written reports from both the Sacramento Municipal Utility District and Pacific Gas & Electric Company that have been forwarded to you. This information is also available at our website, www.SacLAFCo.org. SMUD public hearings are archived at the SMUD website, www.SMUD.org. The SMUD meetings are available in a video streaming format. SMUD meetings include both committee meetings and public hearings on this proposal.

PURPOSE OF UPDATE

This report provides your Commission procedural information. It in no way presupposes the outcome of your proceedings. The purpose is to provide your Commission with information that outlines Sacramento Local Agency Formation Commission policy issues that will be addressed in the SMUD proposal. **The matrix is designed to identify the focus of analysis that will be evaluated in relation to your Commission policies.**

As the massive amount of information on this project is gathered, studied, analyzed, and digested by your staff and its consultants, I will forward said information to your Commission---from citizen letters to consultant analysis---for your consideration. The issues before you are certainly not simple, but neither are they beyond your Commission's legal authority nor your capacity to deliberate. As the information evolves, and your Commission receives oral and written testimony during the public hearing process, it is well within your Commission's ability to carry out the LAFCo mandate imposed by the California State Legislature.

CONSULTANTS

Your staff has begun to interview consultants to assist us in the evaluation of this proposal. The expertise of these consultants is primarily related to the distribution systems of electric utility services, their valuation, legal issues regarding buy-out, condemnation proceedings, and other pertinent issues. I request that your Commission authorize me to enter into any contracts deemed necessary, subject to the review and approval of Commission Counsel. The Applicant will reimburse LAFCo for all costs related to processing this proposal.

APPLICABLE COMMISSION POLICIES

General Policies

The fundamental question to be evaluated by your Commission will be the comparison of the cost-effectiveness and service delivery capability between the Sacramento Municipal Utility District and Pacific Gas and Electric Company.

LAFCo procedure provides that the following policies be applied to all proposals:¹

The Commission is charged with encouraging orderly growth and development.

The Commission is responsible for encouraging the logical formation and determination of boundaries.

The Commission must exercise its authority to ensure that affected populations receive efficient services.

The Commission can impose terms and conditions to mitigate environmental impacts, fiscal impacts or other impacts.

The Commission may deny the project.

¹ Sacramento Local Agency Formation Commission Policies, Standards and Procedures for LAFCo, adopted September 5, 1990, Amended May 4, 1993.

The Commission will favorably consider those applications that do not shift the cost for services and infrastructure benefits/ costs to other service areas.

Commission policy encourages the use of service providers that are governed by officials elected by the citizens.

Boundaries

Boundaries must be definite and certain.
Boundaries cannot create islands, corridors or peninsulas.
Boundaries cannot split neighborhoods or parcels.
Boundaries must not create areas that may be difficult to serve.

Revenue Neutrality

The Commission will approve a proposal for a change of organization only if it finds the proposal is revenue neutral.

Where revenue neutrality is not possible because of the requirements of state law or those standards, the Commission shall impose all feasible conditions available to reduce any revenue imbalance or it may deny the proposal.

Efficiency

The Commission should evaluate efficient services and orderly development described as follows:

An annexation proposal must provide the lowest cost and highest quality of urban services for the affected population. The Commission will approve an annexation only if it determines that the annexing agency possesses the capability to provide the most efficient delivery of applicable urban services.

For the purpose of this standard, the most efficient services are those which are provided at the most optimum combination of service cost and service level. **In the case of providers with similar service costs, the provider with higher service levels shall be deemed more efficient. In the case of providers of similar service levels, the provider with the lowest cost shall be deemed more efficient.**

In comparing the providers of adequate but low cost services, with providers of high quality, high cost services, the Commission shall retain discretion to determine this optimum efficiency based on compliance with the other provisions of the standards².

² Ibid, page IV-11.

Identification and measurement of service costs for the purpose of determining revenue impacts, as well as for assessing financial feasibility, should be based on the actual cost of service provided. If actual costs cannot be reasonably identified and measured, costs should be allocated based upon the measure which most accurately reflects the level of service received. The Commission will rely upon current service providers to estimate service costs, so long as costs are estimated in compliance with these standards.

ELECTION PROCESS

If approved, the proposed annexation requires that a subsequent election be called. Your Commission cannot waive the election. However, your Commission has the discretion to determine where the election will be held.

Government Code Section 56876 gives the Commission discretion to call the election as follows:

In any order approving a proposal for an annexation to, or detachment from, a district, the Commission may determine that any election called upon the question of confirming an order for the annexation or detachment [of territory] shall be called, held, and conducted upon that question under either of the following conditions:

- a. Only within the territory ordered to be annexed or detached.**
- b. Both within the territory ordered to be annexed or detached and within all or any part of the district which is outside of the territory.**

Your Commission must determine whether or not this election will be called exclusively in Yolo County or will be called in Sacramento and Yolo Counties.

Election Timing Issues

For your information, a local citizens' group has initiated the gathering of signatures on a Petition that would require SMUD to call an advisory election within Sacramento County regarding the proposed annexation.³ The advisory vote is proposed for the date of **June 6, 2006**. Final LAFCo action will be required before the advisory election results can be certified. Public hearings before your Commission will likely commence in April and May. Final action is required at your **June 7, 2006** public hearing in order to fulfill SMUD's request that a November 2006 election be held on the issue. Therefore, if your Commission is committed to a November 2006 election date, the decision regarding who votes will fall solely on the shoulders of the Commission prior to certification of the

³ A copy of the "Ordinance of the Sacramento Municipal Utility District Requiring an Advisory Vote to Increase Public Information and Provide The Board of Directors With Public Input on the Question of Expanding the Territory of the District" is in the Appendix for your information.

proposed advisory vote. **I do not believe the result of an advisory election is binding on your Commission.**

Election Territory

The SMUD Board of Directors, in its Resolution of Application Initiating Proceedings Before LAFCo request that the election be called exclusively within the territory to be annexed. The Board's Resolution of Application contains principles designed to avoid negative impacts on current SMUD customers. **SMUD cannot legally engage in election campaigning in the same manner that a private utility can. Unlike Pacific Gas and Electric Company, SMUD is prohibited from spending public funds on advocacy.**⁴ For a discussion on previous election practice by your Commission, please see the Appendix, attached.

REPRESENTATION ON SMUD BOARD OF DIRECTORS

Upon a successful election by the electorate on this issue, the SMUD Board of Directors will redistrict ward boundaries pursuant to Public Utilities Code Section 11857.1. The SMUD Board shall, by Resolution, adjust the boundaries of any ward.⁵ After the wards have been established, voters of both Yolo and Sacramento will have the right to vote for Directors in their respective wards.

SMUD Directors are elected by ward for four (4) year terms. Directors have staggered terms and are elected at a general election. Currently, SMUD's registered voters vote to elect **seven directors from seven wards.** Each ward has approximately 175,000 residents. Upon annexation, Yolo residents will be likely be represented by one or more Directors, depending upon how the District reconfigures its wards. The Board of Directors of the Sacramento Municipal Utility District, under the Municipal Utility District Act, has the authority, by resolution or ordinance, to fix the boundaries of the wards for the purpose of electing Directors. **LAFCo has no authority over this process.**

It is unlikely that Yolo County voters will have a ward exclusively representing Yolo County. There is insufficient population in the territory proposed for annexation to create a stand alone ward. Thus, the redrawn ward boundary will, most likely, include a combination of Yolo and Sacramento residents, as determined by the SMUD Board of Directors. Sacramento County residents, by virtue of their plurality, will continue to elect a majority of Directors to the Board of Directors of the Sacramento Municipal Utility District. Nonetheless, even though elected by ward, Directors are accountable and responsible to ratepayers within the District as a whole. Ratepayers are not necessarily registered voters or individuals (ratepayers can be corporate entities).

⁴ See Appendix, Letter dated October 30, 2005, from Marguerite Mary Leoni, Law Offices of Nielsen, Merksamer, Parrinello, Mueller & Naylor, to Arlen Orchard regarding "Improper Use of Public Funds to Influence Advisory Vote Initiative."

⁵ The process is set forth in the Municipal Utility District Act (MUD Act). In addition, the powers and duties of the Directors are set forth in this statute.

MATRIX OF ISSUES TO BE EVALUATED

<i>Issue</i>	<i>P.G. & E. Position</i>	<i>SMUD Position</i>	<i>LAFCo Evaluation</i>
History/ Options			
Davis MUD			
Community Choice Aggregation			
City's Ability to Provide Electric Service			
Boundary Alternatives			
Environmental Review			
System Valuation (Infrastructure)			
Cost Approach			
Income Approach			
Market Approach			
Projected Impact of Annexation On SMUD			
Customers & Rates			
Projected Impact of Annexation On Yolo			
Customers & Rates			
Natural Gas			
Total Acquisition Costs			
In Lieu Taxes			
Exit Fees			
Quality of Service Comparison Between SMUD and P.G. & E.			
Technical Assessment of Electrical System			
Condition of System			
Stranded Facilities			
Duplication			
Severing and Connecting to SMUD			
System Design			
System Capacity			
New Load Growth			
Outages			

<i>Issue</i>	<i>P.G. & E. Position</i>	<i>SMUD Position</i>	<i>LAFCo Evaluation</i>
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**Impact of Annexation
On Franchise Fee
& Property Tax Revenue**

**Impact of Redistricting
Governance Issues**

Regulatory Structure

**Legal Issues
(Commission
Counsel to Provide)**

Structural Financial Differences

**Yolo Rate Comparison
Before and After**

**Economic Evaluation
Total Cost/ Benefit**

Impacts to P.G. & E. Employees

**Impacts to Remaining P.G. & E. Customers
(PUC Findings)**

PB:Maf
(Nov 05 SMUD Update beta)