

RESOLUTION No. LAFC 2009-12-0902-07-09

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION

***RESOLUTION MAKING DETERMINATIONS AND APPROVING SACRAMENTO
MUNICIPAL UTILITY DISTRICT'S APPLICATION TO ACTIVATE
THE LATENT POWER FOR THERMAL ENERGY***

WHEREAS, Section 56824.12 of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 requires that a proposal to provide a new or different function or class of services or divestiture of the power to provide particular functions or classes of services, within all or part of the jurisdictional boundaries of a special district, pursuant to subdivision (b) of Section 56654, shall be made by the adoption of a resolution of application by the legislative body of the special district and shall include all of the matters specified for a petition in Section 56700, except paragraph (6) of subdivision (a) of Section 56700, and be submitted with a plan for services prepared pursuant to Section 56653; and

WHEREAS, Public Utilities Code section 12801 authorizes Sacramento Municipal Utility District ("SMUD") to provide light, water, power, heat, and transportation service, telephone or other communication service, and garbage, sewer, or refuse matter service; and

WHEREAS, SMUD presently provides electric service, but none of the other services it is authorized to provide, within its service boundaries; and

WHEREAS, SMUD published a Notice of Resolution of Application to Exercise a Latent Power to activate its latent power for thermal energy ("TE") service within its service boundaries; and

WHEREAS, on May 6, 2009, SMUD held a public hearing regarding the Resolution of Application (SMUD Resolution No. 09-05-04) to Sacramento Local Agency Formation Commission ("LAFCo") to activate SMUD's latent power for thermal energy service in its service boundaries, as required by Government Code Section 56824.12, subdivision (c); and

WHEREAS, on May 7, 2009, SMUD adopted the Resolution of Application to Sacramento LAFCo to activate SMUD's latent power for thermal energy service in its service boundaries (Resolution No. 09-05-04), as required by Government Code Section 56824.12, subdivision (a); and

WHEREAS, on June 2, 2009, SMUD filed the Resolution of Application and Plan for Services ("Application") with the Executive Officer of Sacramento LAFCo for a change of organization- to activate a latent power for thermal energy service in its service boundaries; and

WHEREAS, on June 5, 2009, Sacramento LAFCo distributed the Application to affected agencies and interested parties;

WHEREAS, Sacramento LAFCo staff consulted with SMUD personnel, affected agencies and interested parties; and

WHEREAS, the Sacramento LAFCo conducted review under the California Environmental Quality Act (“CEQA”) and determined that the application is exempt from review under CEQA Guidelines Section 15320; and

WHEREAS, activation of SMUD’s latent power for thermal energy service will enable SMUD to help fill a vital need that has been identified by policymakers and regulators; and

WHEREAS, Sacramento LAFCo has considered the data, recommendations and determinations contained in the Application and public record at a noticed public hearing held on September 2, 2009, and received all oral testimony and evidence which was made, presented or filed; and

WHEREAS, at the hearing on the Application, public comment was received and all persons present were given the opportunity to hear and be heard in respect to any matter relating to the Application; and

NOW, THEREFORE, the Sacramento LAFCo does hereby find, determine, resolve and order as follows:

1. The Commission has considered all relevant factors set forth in Government Code Sections 56824.12, 56668, and all other applicable statutes and regulations in reaching its conclusions regarding the Application including its findings set forth below.
2. Notice as required by law has been given.
3. The Application (including the Resolution of Application SMUD No. 09-05-04 and Plan for Services) submitted by SMUD comply with Government Code sections 56700 and 56824.12 because they include each of the required items for a complete application.
4. The Commission finds that the activation of the latent power is exempt from CEQA review pursuant to CEQA Guidelines section 15320. This Categorical Exemption applies to changes in the organization or reorganization of local governmental agencies where the changes do not alter the geographical area in which previously existing powers are exercised. SMUD’s proposed change of organization does not change the geographical area in which previously existing powers were exercised. Additionally, there are no “previously existing powers” because no other entity provides retail thermal energy service in the area where SMUD seeks to be able to provide such service.
5. The Commission approves the activation of the latent power of thermal energy for SMUD and authorizes SMUD to exercise such power in any manner allowed under law.
6. Sacramento LAFCo determines that the Plan for Service submitted by SMUD complies with Government Code sections 56824.12 and 56653, relying on the accompanying Staff Report and as follows:
 - a. SMUD may provide retail TE service to customers at appropriate locations within its service boundaries using District Energy Systems (“DES”), which in some cases may include Combined Heat and Power (“CHP”) facilities and/or TE storage.

- b. Customers within a DES would use TE for some or all of the following purposes:
 - i. Chilled water for cooling building spaces,
 - ii. Hot water for heating building spaces
 - iii. Steam for heating building spaces
 - iv. Hot water or steam to produce domestic potable hot water, within the buildings
 - v. Other thermal services, such as process steam.
- c. SMUD would develop DES facilities at appropriate sites throughout its service boundaries that are appropriate for district energy.
- d. Provision of TE service will require the operation of central utility plants (District Energy Systems). Each DES will be designed, constructed, operated, and maintained to meet the requirements of the customer uses in the development district where it provides heat and cooling.
- e. SMUD anticipates using traditional debt financing for the capital expenditures associated with developing a DES. Details regarding financing are included in the staff report and Plan for Service.
- f. It is difficult to estimate the total costs to provide TE services within SMUD's service territory until specific projects are identified. Costs will be dictated by the type of DES (*e.g.*, chilled water, hot water, and steam), the size of the loads to be served, the geographical expanse of the DES, inclusion of CHP and/or TE storage, and other factors.
- g. Each DES will be designed, constructed, operated, and maintained to meet the requirements of the customer uses in the development district where it provides heat and cooling. SMUD will provide any thermal energy services pursuant to a SMUD tariff and/or an appropriate contract. SMUD will recover the costs of developing, constructing, owning, and operating DES from SMUD customers, as appropriate, through rates. This may involve a public ratesetting proceeding to establish rates for TE services.
- h. No other entity provides retail thermal energy service in the area where SMUD seeks to be able to provide such service
- i. SMUD's application requests activation of a new latent power to provide TE service at appropriate locations within its service boundaries and does not affect its existing boundaries, powers, or services.
- j. There are no local agencies whose service area or service responsibility would be altered by the activation of SMUD's latent power for thermal energy service.
- k. There are no alternatives to SMUD activating its latent power for thermal energy services as no other provider exists to provide service.

7. As required by Government Code section 56824.14(a), Sacramento LAFCo finds and determines that SMUD has demonstrated that it will have sufficient revenues to carry out the proposed thermal energy services for the reasons discussed in detail in the Plan for Services and Staff Report and as follows:
 - a. SMUD's underlying credit ratings provide SMUD with full access to the credit markets. SMUD's current credit ratings are "A+" from Standard & Poor's and "A1" from Moody's. It is SMUD's policy to maintain credit ratings that ensure access to capital markets. SMUD considers this requirement in setting rates. Sources of capital include revenue bonds and bank secured variable rate debt. In addition to its borrowing capacity, SMUD also makes use of internally generated cash to finance capital projects with a goal of funding 20% of capital expenditures with cash generated from operations. Other capital sources may also include developer contributions commensurate with the developer's benefits. With respect to district energy, such benefits could include the reduced and/or avoided costs of heating and cooling systems normally installed in large buildings and the resulting increase in usable space available for lease.
 - b. Debt service and other ongoing costs, including fuel and operating and maintenance costs, will be recovered through district energy customer rates. Additionally, avoided generation, transmission, and distribution capacity costs may be considered as funding sources if they would otherwise be contributed by SMUD ratepayers using a conventional plan of service. If applicable, avoided environmental costs, such as costs to mitigate SMUD's carbon footprint, may be considered as sources of funds for district energy projects.
 - c. The costs and benefits derived by the provision of thermal services by SMUD to customers will primarily be borne by and directed to customers receiving those thermal services. To the extent that a district energy system benefits SMUD customers outside of a DES, the costs and benefits of such system will flow to all SMUD customers.
 - d. It is difficult to estimate the total costs to provide TE services within SMUD's service territory until specific projects are identified. Costs will be dictated by the type of DES (e.g., chilled water, hot water, and steam), the size of the loads to be served, the geographical expanse of the DES, inclusion of CHP and/or TE storage, and other factors.
 - e. SMUD will evaluate the economic feasibility of each potential DES. SMUD will only move forward with systems that are beneficial for all SMUD customers, *i.e.*, the customers in the potential district and other SMUD customers as well.
 - f. Each DES will be designed, constructed, operated, and maintained to meet the requirements of the customer uses in the development district where it provides heat and cooling. SMUD will provide any thermal energy services pursuant to a SMUD tariff and/or an appropriate contract. SMUD will recover the costs of developing, constructing, owning, and operating DES from SMUD customers, as appropriate, through rates. This may involve a public rate setting proceeding to establish rates for

- TE services. SMUD will only develop DES that it determines are beneficial for district energy customers and other SMUD customers.
- g. In general, SMUD will construct, own, and maintain all conduits and piping necessary to provide service to a district. In some cases developers may be required to pay costs where conduit and piping requirements exceed a certain distance.
8. Sacramento LAFCo considered the relevant factors in Government Code section 56668 as follows:
- a. The ability to exercise its latent power for thermal energy will enable SMUD to provide cost effective and reliable thermal energy service, and achieve Greenhouse Gas (GHG) reductions, consistent with SMUD energy goals and the sustainability policies of local land use jurisdictions.
- b. No entity currently provides retail TE service within SMUD's service boundaries. The need for the services is discussed in detail in the Staff Report. In summary, the provision of TE service has the following potential benefits:
- i. Reduces Greenhouse Gas emissions
 - ii. Increases energy efficiency, consistent with the top priority in the State's Preferred Loading Order as described in the Energy Action Plan
 - iii. Furthers community sustainability strategies, as called for by the Sacramento Area Council of Governments (SACOG) Region Blueprint and SB 375
 - iv. Increases energy reliability
 - v. Contributes to Leadership in Energy and Environmental Design certifications
 - vi. Improves cost effectiveness of energy supply
 - vii. Makes more rooftop space available, creating opportunities to install solar photovoltaic power generation systems
 - viii. Avoids storage of fuels and refrigerants at individual building sites
 - ix. Reduces noise and vibration compared to cooling and heating systems at individual building sites
 - x. Eliminates visual impact of packaged air conditioning units and other equipment
 - xi. Reduces operating and maintenance costs for building owners and tenants
- c. SMUD's Application to provide TE services at appropriate locations using DES will further state, regional, local, and SMUD goals and policies relating to climate change and the provision of environmentally beneficial, cost effective, efficient, and reliable energy service. District energy, both with and without CHP, furthers these goals and policies by utilizing centralized and efficient technologies to replace relatively less efficient and decentralized heating and cooling facilities. CHP, which uses one fuel input to produce two outputs and captures and uses heat that is otherwise wasted in the energy generation process, further promotes important state, regional, local, and SMUD goals and policies.

- d. The Application for activation of SMUD's latent power for TE does not affect patterns of urban development and its energy goals are consistent with land use jurisdictions' general plans.
 - e. The Application does not affect agricultural lands.
 - f. The boundaries of SMUD's territory are not affected by the Application.
 - g. The Application to activate a latent power is not affected by and does not affect county general and specific plans.
 - h. The Application does not affect the sphere of influence of any local agency.
 - i. Comments of affected local agencies were considered. No objections to the Application have been received to date. The City of Folsom supports the application, provided that a condition is applied to prohibit SMUD from mandating the use of thermal power. A condition is not necessary as SMUD cannot mandate the use of thermal power by a developer of a particular site. Sacramento County Water Agency requested and SMUD agrees that impacts on available water supplies be assessed pursuant to CEQA in the event a DES is developed.
 - j. SMUD's Application does not propose any newly formed or receiving entity and does not propose any boundary changes.
 - k. The approval of activation of SMUD's TE latent power does not affect the timely availability of water provided LAFCo conditions such approval on the requirement that any CEQA review that may be required in connection with future thermal energy service at SMUD district energy projects occurs.
 - l. The SMUD Application does not affect the regional housing needs allocation (RHNA).
 - m. No information or comments were received from landowners, registered voters, or ratepayers.
 - n. The existing land uses within SMUD's service boundaries are Residential, Commercial, Mixed-use, Office, Industrial, Open Space and Agriculture and SMUD's Application does not affect land use.
9. This Application is subject to Conducting Authority proceedings under Government Code sections 56824.14(a)(2), and 57075.
- a. The affected territory is inhabited, (i.e., more than twelve registered voters live in the service area). Notice has been published in the Sacramento Bee, the Woodland Democrat, and the Roseville Press-Tribune.
 - b. No written protests of the change of organization (activation of a latent power) have been received. Any person or affected agency may file a written request with the

executive officer requesting amendments to or reconsideration of this resolution within 30 days of adoption. (Gov. Code, § 56895 (a)(b).)

- c. The Commission hereby delegates the Executive Officer as the Conducting Authority and directs that the Protest Hearing be set after the close of the thirty day reconsideration period. At the hearing, the Executive Officer shall determine the value of any oral or written protests that are filed and not withdrawn.
10. Based upon the public record, documents submitted to Sacramento LAFCo, and testimony and evidence submitted at the public hearing, SMUD’s Application to activate its latent power to provide thermal energy service is granted subject to the following terms and conditions:
- a. SMUD shall ensure sufficient revenues exist to carry out thermal energy services.
 - b. SMUD shall ensure that the costs and benefits of thermal energy services are equitably allocated to SMUD’s customers.
 - c. SMUD shall include thermal energy service in its next scheduled municipal services review.
 - d. SMUD shall ensure that any CEQA review that may be required in connection with future thermal energy service at SMUD district energy projects occurs.

ON A MOTION made by Commissioner _____ seconded by Commissioner _____
the foregoing Resolution No. LAFC **2009-12-0902-07-09** was adopted by the
SACRAMENTO LOCAL AGENCY FORMATION COMMISSION, on this **2nd day of**
September 2009, by the following vote, to wit:

- AYES:**
- NOES:**
- ABSTAIN:**
- ABSENT:**

By: _____
Jimmie Yee, Chair
SACRAMENTO LOCAL AGENCY FORMATION COMMISSION

ATTEST:

Diane Thorpe
Commission Clerk

Attachment: Plan for Services