

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:)	Docket No. 01-AFC-19
)	
Application for Certification)	
of the Sacramento Municipal)	
Utility District's Cosumnes)	
Power Plant Project)	
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SACRAMENTO MUNICIPAL UTILITY DISTRICT'S
SECOND REPLY BRIEF

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STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:)	Docket No. 01-AFC-19
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Application for Certification)	SMUD’S SECOND REPLY BRIEF
of the Sacramento Municipal)	
Utility District’s Cosumnes)	
Power Plant Project)	
_____)	

INTRODUCTION

The Sacramento Municipal Utility District (“SMUD” or “the District”) and the Energy Commission Staff (“Staff”) are in agreement that the proposed Cosumnes Power Plant Project (“CPP” or “Cosumnes Project”) should be approved. SMUD and Staff are likewise in agreement on all of the Conditions of Certification that should attach to the Energy Commission Decision, other than the ammonia slip condition and related language, which was discussed in the last round of briefs.

In this Second Reply Brief, SMUD discusses two subjects. First, we update the Committee on the status of SMUD’s acquisition of biological habitat mitigation credits. Second, we explain the importance of the Cosumnes Project to SMUD’s customer-owners and the urgent need for the Presiding Member’s Proposed Decision (“PMPD”) and the full Commission’s Final Decision to be issued in time to allow construction to start by the end of August 2003.

I

UPDATE ON BIOLOGICAL HABITAT MITIGATION CREDITS

SMUD is pleased to report its successful progress in finalizing the biological mitigation required under the proposed Conditions of Certification for Vernal Pool Preservation Habitat, Vernal Pool Creation Habitat, Giant Garter Snake Habitat, and Swainson’s Hawk Habitat. SMUD now has two fully executed agreements for Vernal Pool Preservation Habitat and Swainson’s Hawk Habitat and two partially-executed agreements on Vernal Pool Creation Habitat and Giant Garter Snake Habitat, which are both awaiting signature by Wildlands, Inc. (“Wildlands”). The specific description and status of these four agreements are as follows:

1. **Vernal Pool Preservation Habitat Agreement.** SMUD and Conservation Resources, LLC, have fully executed a binding “Agreement for Sale of Vernal Pool Preservation Mitigation Credits,” which obligates SMUD to purchase 19.7 acres of Vernal Pool Preservation Credits in the Laguna Creek Mitigation Bank located in Sacramento County, as mitigation for CPP impacts to listed vernal pool species and jurisdictional wetlands/waters. The compensatory vernal pool habitat is also habitat for the California tiger salamander. This agreement has been provided to the United States Fish and Wildlife Service (“USFWS”) for signature.
2. **Swainson’s Hawk Forage Habitat Agreement.** SMUD and Conservation Resources have also fully agreed to a binding “Bill of Sale” in which SMUD will purchase 54 acres of Swainson’s Hawk foraging habitat credits located within the Laguna Creek Mitigation Bank in Sacramento County, as mitigation for CPP impacts. This mitigation bank has been approved for prior projects by

the California Department of Fish and Game (“CDFG”). (See attached letter, Exh. A.) Conservation Resources has forwarded information regarding this sale to CDFG and is awaiting CDFG’s signature to approve the agreement.

3. **Vernal Pool Creation Habitat Agreement.** SMUD has executed the “Agreement Between Wildlands, Inc., and [SMUD] for the Sale of 3.0 Acres of Vernal Pool Mitigation Creation Credits for the Cosumnes Power Project,” consisting of three acres of vernal pool creation habitat credits in the Wildlands’ Sheridan Wetlands Mitigation Bank, located in Placer County, California. This is a USFWS approved bank with sufficient creation credits, and CPP is located within the bank’s service area. Wildlands has indicated it intends to sign this binding agreement this week. Once signed by Wildlands, the agreement will be provided to USFWS for signature.
4. **Giant Garter Snake Habitat Agreement.** SMUD has executed the “Agreement Between Wildlands, Inc., and [SMUD] for the Sale of 41.5 Acres of Mitigation Creation Credits for the Cosumnes Power Project,” consisting of 41.5 acres of created and restored giant garter snake habitat at Whitney Ranch in Sacramento County. Wildlands has likewise indicated that it intends to sign this binding agreement this week. This is part of a 130-acre project that has already been approved by USFWS. (See attached letter, Exh. B.)

These four habitat purchase agreements fulfill all of SMUD’s compensatory habitat purchase/replacement obligations proposed in the Final Staff Assessment (“FSA”), as well as all of the habitat replacement mitigation obligations that the state and federal wildlife agencies have indicated they will include in their permit conditions for the Cosumnes Project.

II

TO KEEP THE COSUMNES PROJECT ON SCHEDULE TO START OPERATION IN LATE SUMMER 2005, SMUD NEEDS AN ENERGY COMMISSION DECISION BY THE END OF AUGUST 2003

SMUD's peak load is expected to exceed its ability to import power to the Sacramento area by 2006 under current growth conditions, or as early as summer of 2005, if population and economic growth in the area accelerate over the next two years. SMUD is doing everything within its powers to ensure that the Sacramento area summer peak demands can be met by 2005 and to prevent electricity shortages and price increases from occurring within its service area.

To further these objectives, SMUD's Board has increased the District's commitment to its award-winning renewable energy, energy efficiency and load reduction programs, which have been nationally and internationally recognized for many years. SMUD has also invested substantial resources to develop its own control area that will allow SMUD to continue to operate even when other California utilities face energy shortages due to financial issues or failure to meet their obligation to provide reserve power.¹ Finally, SMUD has committed over \$170 million to date and over \$375 million in total funds to build the Cosumnes Project and to have CPP Phase I on line in the summer of 2005.

It will take SMUD at least 22 to 24 months to complete CPP Phase I, provided that work can start in time for earthmoving and erosion controls to be completed in environmentally sensitive areas before the start of this year's rainy season (usually November 1). Generally, each month's delay in construction will add a one-month delay in the start of the Cosumnes Project's

¹ Although having its own control area allows SMUD to avoid participating in the kinds of rotating outages ordered several years ago by the California Independent System Operator, SMUD will continue its "mutual aid" commitment to support the statewide electricity grid in the event of a true electrical emergency such as the loss of a major transmission line or equipment.

operation. However, if the initial earthmoving work is not completed by the start of this year's rainy season, a whole season may be lost, delaying the start of construction by at least six months.

It will cost SMUD about \$1.5 million each month in construction cost increases for every month that CPP Phase I construction is delayed. SMUD conservatively estimates that it will cost an additional \$4 million each month, in net replacement power costs for every month that CPP operation is delayed past the summer of 2005, not counting the substantial costs that SMUD would incur to ensure that it could serve peak load in 2005.²

This means that it will cost SMUD and its customer-owners a minimum of \$5 to 6 million each month for every month that the start of Cosumnes Project construction is delayed past August 31, 2003. If the earthmoving work discussed above is not completed before the start of this year's rainy season, the delay will cost a minimum of \$30 million and threaten the reliability of service to SMUD's customer-owners in the summer of 2005.

As you can see, it is critical that SMUD obtain all necessary permits to start construction of the Cosumnes Project by the end of August 2003. SMUD recognizes that the Energy Commission cannot control the timing of some of the other project permits and approvals required, such as the USFWS, U.S. Army Corps of Engineers, CDFG, and State Lands Commission. However, the Commission's Decision is the most critical one for SMUD to obtain

² The projected net replacement power costs are average monthly costs, after netting out the costs that SMUD would forego by not operating CPP Phase I. Actual net replacement power costs would normally be higher in peak summer months and less in winter months. After a competitive request for proposals ("RFP") process, the District has awarded a contract to Rockford Corporation to construct the gas pipeline in accordance with the terms of the Project Labor Agreement adopted by the SMUD Board in November 2002. SMUD intends to issue a limited notice to proceed within the next few weeks so that the contractor can get started with some preliminary matters prior to the start of construction. SMUD will immediately issue the final notice to proceed as soon as the Energy Commission issues the Final Decision, assuming it is favorable. Following a competitive RFP process for the power plant construction contract, SMUD is negotiating contract terms with two finalists. SMUD expects to award that contract in July 2003. As with the gas pipeline contract, SMUD intends to issue the notice to proceed on the power plant construction contract as soon as the Energy Commission issues the Final Decision, assuming it is favorable.

because no construction on either the power plant or the natural gas pipeline can commence without the Commission’s Decision, whereas partial construction of certain facilities could still commence before receiving all of the other agencies’ final approvals.

CONCLUSION

For the reasons stated above and based upon the evidentiary record of this proceeding, SMUD urges the Committee to issue the PMPD as soon as possible, recommending approval of the proposed Cosumnes Project, gas pipeline and other related facilities and including the following:

- (a) Findings and conclusions that the Cosumnes Project will comply with all public health and safety standards, applicable air and water quality standards, and all other applicable laws, ordinances, regulations and standards (“LORS”); and
- (b) SMUD’s proposed Conditions of Certification for air quality and the Conditions of Certification jointly proposed by SMUD and Staff for all other technical areas, which contain all modifications, mitigation measures, conditions, or other specific provisions relating to the manner in which the proposed facilities are to be designed, sited, and operated in order to:
 - 1) protect environmental quality;
 - 2) assure safe and reliable operation of the facility; and
 - 3) comply with all applicable LORS.

Respectfully submitted,

Dated: _____

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