

**STAFF REPORT**

**RESOLUTION OF NECESSITY HEARING FOR**

**SSJID'S RETAIL ELECTRIC PROJECT - - PROPERTY ACQUISITION**

## Contents

|     |  |    |
|-----|--|----|
| I.  | INTRODUCTION.....  | 3  |
| a.  | Required Findings For A Resolution Of Necessity .....  | 3  |
| b.  | Conduct Of Hearing For Resolution Of Necessity .....   | 4  |
| II. | SSJID'S PROPOSED RETAIL ELECTRIC PROJECT.....  | 6  |
| a.  | Project Description .....  | 6  |
| b.  | Public Benefits of the Proposed Retail Electric Project.....   | 7  |
| c.  | District and Project History .....   | 11 |
| d.  | San Joaquin County LAFCo's Approval Of SSJID's Application For<br>Change Of Organization To Provide Retail Electric Service..... | 13 |
| 1.  | 2009 Application to LAFCo .....  | 13 |
| 2.  | Valuation and Financial Feasibility Issues .....   | 14 |
| 3.  | Municipal Services Review/Sphere of Influence/Environmental<br>Impact Report .....   | 16 |
| 4.  | December 2014 LAFCo Hearing.....   | 17 |
| e.  | Summary of Service Plan .....  | 19 |
| f.  | Engineering Plan to Provide Retail Electric Service .....  | 20 |
| 1.  | Inventory of the Assets of PG&E's Electrical Distribution System<br>.....  | 21 |
| 2.  | Severance/Separation Plan .....  | 23 |
| g.  | SSJID's Plan To Provide Retail Electric Service Is Financially Feasible<br>.....   | 26 |
| 1.  | Overview of Financial Feasibility Analysis .....   | 26 |
| 2.  | SSJID's Ability to Provide Retail Electric Service At A 15%<br>Discount.....   | 28 |

|    |  |    |
|----|--|----|
| 3. | SSJID's Plan To Provide Retail Electric Service Is Financially Feasible .....  | 30 |
| 4. | The Financial Model Incorporates LAFCo's Conditions of Approval .....          | 32 |
|    | i. Public Benefits.....  | 32 |
|    | ii. Payments-In-Lieu of Taxes .....  | 33 |
|    | iii. CARE Rates.....   | 34 |
|    | iv. Determination of Feasibility.....  | 34 |
|    | v. Service Reliability .....   | 35 |
| 5. | The Financial Model Relies on Realistic and Conservative Inputs.....           | 35 |
|    | i. Purchase Price .....  | 36 |
|    | ii. Other Financed Costs .....   | 36 |
|    | iii. Wholesale Power Costs.....  | 36 |
|    | iv. Revenue Forecast .....   | 37 |
|    | v. Operations & Maintenance/Administrative & General.....                      | 38 |
| 6. | Cash Reserves With Retail Electric Services.....                               | 40 |
| h. | Cumulative Savings to SSJID Ratepayers and Benefits to the Local Economy ..... | 40 |
|    | 1. Impact of Increased Spending Generated From Lower Electricity Rates .....   | 41 |
|    | 2. Impact of Increased SSJID Spending.....                                     | 42 |
|    | 3. Improved Economic Competitiveness From Lower Electricity Rates. ....        | 43 |
| i. | No Negative Impact on Irrigation Water Service.....                            | 43 |

- j. SSJID's Capability to Operate And Manage The Retail Electric Project. .... 45
  - 1. Governing Structure..... 45
  - 2. SSJID's Draft Business Plan..... 48
  - 3. Data Management ..... 51
  - 4. SSJID's Water Assets..... 51
  - 5. SSJID's Electric Generation Assets and Marketing ..... 52
- III. OVERVIEW OF PUBLIC POWER INDUSTRY ..... 54
  - a. Benefits of Public Power..... 54
  - b. Challenges of Public Power..... 55
  - c. Public Power Industry..... 57
    - 1. History ..... 57
    - 2. Culture ..... 58
  - d. Effect of Cost Controls in Propositions 26 and 218 on Cost of Service as Compared to Investor-Owned Utilities ..... 59
- IV. SUPPORT FOR FINDINGS AND DETERMINATIONS REQUIRED IN ADOPTING THE RESOLUTION OF NECESSITY ..... 60
  - a. General Statement Of Public Use and Condemnation Authority ..... 60
  - b. Public Interest And Necessity..... 61
  - c. Planning And Location Of The Project..... 62
  - d. Necessity For Acquiring The Property Interests ..... 68
  - e. More Necessary Public Use ..... 69
  - f. Government Code Offer ..... 72
  - g. CEQA Review And Compliance ..... 73
- V. CONCLUSION AND RECOMMENDATION ..... 74

**Exhibits to Staff Report**

**Exhibit A** - Proposed Resolution of Necessity

**Exhibit B** - Board of Directors' Statement of Principles and Goals August 2004

**Exhibit C** - PG&E's Criticisms of Retail Electric Project

**Exhibit D** - City of Manteca Resolution No. R-2009-345

**Exhibit E** - City of Ripon Resolution No. 09-76

**Exhibit F** - City of Escalon Resolution No. 02-10

**Exhibit G** - SSJID Resolution No. 14-12-E on PILOT

**Exhibit H** - Final Subsequent Environmental Impact Report (Plan to Provide Retail Electric Service, Sphere Plan, MSR, and Annexation) (November 2014)

**Exhibit I** - Draft Subsequent Environmental Impact Report (Plan to Provide Retail Electric Service, Sphere Plan, MSR, and Annexation) (November 2011)

**Exhibit J** - Partially Recirculated Draft Subsequent Environmental Impact Report (Plan to Provide Retail Electric Service, Sphere Plan, MSR, and Annexation) (July 2012)

**Exhibit K** - Preliminary Revised Draft Sphere of Influence Plan/Municipal Service Review South San Joaquin Irrigation District Report, (published March 3, 2014, revised September 9, 2014)

**Exhibit L** - Addendum to Draft Sphere of Influence/Municipal Service Review, prepared by Mintier Harnish (November 2014)

**Exhibit M** - Errata to Addendum to Draft Sphere of Influence/Municipal Service Review (November 25, 2014)

**Exhibit N** - SJ LAFCo Findings & Conditions of Approval (December 11, 2014)

**Exhibit O** - San Joaquin Local Agency Formation Commission Resolution No. 1327

**Exhibit P** - Offer to PG&E and Appraisal Summary Statement (*without attachments*)

**Exhibit Q** - *South San Joaquin Irrigation District Retail Electric Financial Analysis* (MRW & Associates, June 2016)

**Exhibit R** - SSJID's Draft Business Plan for New Retail Electric Utility

**Exhibit S** - Larry W. Dillon, P.E., Opinion Letter on SSJID Draft Business Plan (*with resume*)

**Exhibit T** - Steven J. Klein, Opinion Letter on SSJID Draft Business Plan (*with resume*)

**Exhibit U** - SSJID Organizational Chart

**Exhibit V** - Dr. Jeffrey Michael, Ph.D., Economic Development Benefits of South San Joaquin Irrigation District Providing Electric Service (June 21, 2016)

***The following exhibits, letters W - CC are not subject to public disclosure pursuant to the Critical Infrastructures Protection Act (6 U.S.C.A. section 133) and the Critical Energy Infrastructure Information (CEII) (18 U.S.C.A. section 388.13) and California Government Code sections 6254(k) and 6255.***

**Exhibit W** - SSJID 2015 Distribution Network Inventory, Severance Plan and Cost Estimation (May 2016)

**Exhibit X** - 2014 Inventory Update Prepared for South San Joaquin Irrigation District (January 2014)

**Exhibit Y** - SSJID Distribution Inventory & Severance Study; Plan to Supply Consumers Outside SSJID's Service Territory if MID to Commercialize Option is Unavailable (2011 separation update)

**Exhibit Z** - Distribution Network Inventory and Severance Issues Report (February 2010)

**Exhibit AA** - Network Configuration and Investments Report (May 2005)

**Exhibit BB** - Enclosure/PAD Mounted Inspections Memorandum, with attachments (December 2015)

**Exhibit CC** - Manteca, Ripon, Vierra, Riverbank and Avena Inspection summary (December 2015)

## I. INTRODUCTION

This Staff Report is submitted for consideration by the Board of Directors ("Board") of South San Joaquin Irrigation District ("SSJID" or the "District") prior to the recommended adoption of the proposed resolution of necessity ("RON") authorizing SSJID's acquisition of Pacific Gas & Electric Company's ("PG&E") retail electric distribution system within the District's boundaries by eminent domain for the purpose of the District's ownership, management and operation of a retail electric distribution system within its boundaries ("Proposed Project").

California law provides that SSJID, a public entity, may exercise the power of eminent domain, but only if it has adopted a RON that meets the requirements of Code of Civil Procedure sections 1245.210, *et seq.* The statutory requirement that a public entity adopt a RON before initiating a condemnation action "is designed to ensure that public entities will verify and confirm the validity of their intended use of the power of eminent domain prior to the application of that power in any one particular instance."<sup>1</sup>

### a. Required Findings For A Resolution Of Necessity

The mandatory contents of a RON are set forth in Code of Civil Procedure section 1245.230. The RON must contain a general statement of the public use for which the property is to be taken, a reference to the statute authorizing the exercise of eminent domain, a description of the property to be acquired, and a declaration stating that each of the following have been found and determined by the Board to be the case:

- 1) The public interest and necessity require the proposed project;

---

<sup>1</sup> *San Bernardino County Flood Control Dist. v. Grabowski* (1988) 205 Cal.App.3d 885, 897.

- 2) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;
- 3) The property described in the resolution is necessary for the proposed project; and
- 4) That the offer of just compensation required by section 7267.2 of the Government Code has been made to the owner of record.

Further, where the property to be acquired has been dedicated to a public use, which is the case here as the property is currently used for PG&E's provision of retail electric service, pursuant to Code of Civil Procedure sections 1240.610 and 1240.650, the Board must find that the acquisition of such property by SSJID for the Proposed Project is for a more necessary public use than that to which the property has already been appropriated.

Lastly, the Board must find that the requirements of the California Environmental Quality Act ("CEQA") found in California Public Resources Code sections 21000, *et seq.*, have been met.

**b. Conduct Of Hearing For Resolution Of Necessity**

If the Board decides to acquire PG&E's electrical distribution system, it will need to do so by eminent domain as no agreement has been reached with PG&E on the District's offer to purchase the system and, in fact, by letter dated June 2, 2016, PG&E rejected the District's offer to purchase and stated that PG&E's assets are not for sale.

As stated above, the initiation of the eminent domain process can only be authorized by the Board's adoption of a RON. The Board must hold a public hearing on the adoption of the RON authorizing the acquisition of PG&E's retail electric distribution system and make the findings as required under California Eminent Domain Law.



The RON prepared for the Board's consideration covers the property and interests in PG&E's electrical distribution system located within the District's service territory. The District does not intend to acquire any portion of PG&E's system located outside of the District's service boundaries.

The RON must be adopted by no less than a two-thirds vote of the entire governing body, which is an affirmative vote of at least 4 directors. The RON may only be adopted after the governing body has given each party with an interest in the affected property (in this case PG&E) or its representative, a reasonable opportunity to appear and be heard on the following matters:

- 1) The public interest and necessity require the proposed project;
- 2) The project is planned or located in a manner that will be most compatible with the greatest public good and least private injury;
- 3) The property to be acquired is necessary to the project;
- 4) The offer of just compensation has been made to the property owner; and
- 5) The public use is a more necessary public use than the use to which the property is appropriated.

The owner of the property to be acquired, PG&E, must be afforded an opportunity to appear at the hearing and lodge objections. Notice of this hearing was sent by first class mail, as well as by hand delivery, to PG&E on June 6, 2016. The notice stated the District's intent to consider the adoption of the RON, the right of the property owner to appear and be heard on the matters outlined above, and that failure to file a written request to appear at the hearing would result in a waiver of the right to appear and be heard. The amount of the just compensation offered is not a consideration at the hearing on the adoption of the RON, and PG&E's objection to the offer, whether because of the amount or other reasons, does not prevent the Board from adopting the RON. The Board will conduct a hearing so that PG&E and the general public may appear and be heard.

This Staff Report begins with a summary of the District's proposed retail electric project, and describes the significant public benefits of the Proposed Project (including gaining local control, transparency and accountability over retail electrical distribution in SSJID's territory, discounted electric rates, more localized public benefits program spending, increased emphasis on the local system's reliability with goals of maintaining existing and improving long-term reliability, and stimulus to the local economy through customer savings and job creation). This Staff Report contains information on the District's capability to reliably manage and operate the retail electric system and the financial feasibility and soundness of the Project; it also provides specific data and information addressing each of the five required findings listed above.

This Staff Report, along with supporting documentation, is intended to assist the Board in determining whether the requirements of Code of Civil Procedure section 1245.230 have been met, and whether the other determinations specified above can be made. If the Board determines that all requirements have been met, and that all findings can be made, it is recommended that the Board adopt the proposed RON for the property described therein.

The RON scheduled to be considered by the Board is included in this Staff Report as Exhibit A.

The Board has full discretion on whether or not to adopt the recommended RON.

## **II. SSJID'S PROPOSED RETAIL ELECTRIC PROJECT**

### **a. Project Description**

The Proposed Project is SSJID's acquisition of PG&E's retail electric distribution system for the purpose of the District's ownership, management and operation of a retail electric distribution system within its boundaries to provide service to approximately 40,000 customers.

**b. Public Benefits of the Proposed Retail Electric Project**

The District's reason for expanding its service to include retail electric service is to provide significant public benefits to its ratepayers and to the local communities within its boundaries.

These public benefits include the following:

- **Local Control and Accountability:** SSJID will provide local control and accountability to its customers because ownership, maintenance and operation of the electrical system will be entrusted to locally elected officials who are directly accountable to voters in the communities served by SSJID.<sup>2</sup> SSJID's retail electric customers will be able to entrust electric service reliability and safety, policies, rates and practices to those same locally elected officials.<sup>3</sup>
- **Accessibility and Transparency:** SSJID directors and management are directly accessible by individual ratepayers to hear and discuss ratepayer concerns. As a public agency, SSJID is subject to the Brown Act<sup>4</sup> and Public

---

<sup>2</sup> In contrast, PG&E is an investor-owned utility ("IOU"). As an IOU, PG&E is managed as a private enterprise. Shareholders, or investors, are owners of the company and decision-making occurs "in house" with little or no public input. PG&E is not subject to public disclosure and "sunshine laws" (i.e., California Constitution art. I, Sec. 3(b) establishing freedom of information) that govern public bodies like SSJID.

<sup>3</sup> PG&E customers are not involved in the decision-making process related to PG&E's services or rate setting. The California Public Utilities Commission ("CPUC") regulates and sets PG&E rates on a statewide basis. Customers who want to have a voice in the provision of service or rate setting process must participate in a complex, litigation-like "rate making" process at the CPUC in San Francisco. A rate case before the PUC is a very technical and time consuming process that effectively precludes individual customers from participating.

<sup>4</sup> The Ralph M. Brown Act (California Government Code section 54950, *et seq.*) was enacted in 1953 and guarantees the public's right to attend and participate in meetings of local legislative bodies.

Records Act<sup>5</sup>, thereby increasing transparency and public participation. SSJID's Board is also subject to Proposition 218<sup>6</sup>; Proposition 26<sup>7</sup>; and the Political Reform Act of 1974 (Gov't Code §§ 81000, *et seq.*). SSJID customers who want to have a voice in decisions that set rates or policy can attend regular SSJID Board meetings in their community and participate in the process without having to travel to San Francisco and navigate the byzantine CPUC system, as PG&E customers would have to attempt. Ultimately, the Board answers to the public through the election process. PG&E, on the other hand, answers to its stockholders, not to the local customers SSJID intends to serve.

- **Reduced Electric Rates:** One of the intended benefits of the Proposed Project is a reduction of customers' electric rates. SSJID's rates will be based on the cost of providing services, and SSJID expects to provide rates 15% lower than PG&E.<sup>8</sup> The experts retained by the District have determined that

---

<sup>5</sup> The California Public Records Act (California Government Code section 6250, *et seq.*) was enacted in 1968 and requires the inspection or disclosure of governmental records to the public upon request, unless excepted by law.

<sup>6</sup> Adopted by voters in November 1996, Proposition 218 (a.k.a. the Right to Vote on Taxes Act) amended the California Constitution (at article XIIC) to require that all taxes imposed by a local government be approved by a vote of the local electorate.

<sup>7</sup> Proposition 26, adopted by voters in 2010, amended article XIIC to provide a more detailed definition of what types of charges constitute a "tax" requiring voter approval. The term "tax" means "any levy, charge, or exaction of any kind imposed by a local government," unless that "levy, charge, or exaction" fits into one of seven enumerated exceptions.

<sup>8</sup> A condition of LAFCo's approval is that, "After acquisition costs and exit fees have been determined and the terms and conditions of financing have been approved SSJID shall prepare a comprehensive economic report analyzing the District's proposed retail rates and the calculation of the percentage rate savings from PG&E's retail rates. . . . SSJID shall not take final action to acquire the PG&E system and implement retail electric service until it has held a public meeting advertised in the same newspapers as those utilized by San Joaquin LAFCo in this proceeding. The notice shall state the action to be taken and shall specifically indicate the proposed level of discount for the first 10 and 30 years of operation based upon an updated financial analysis demonstrating and supporting the financial ability of the District to support such a discount. SSJID shall not commence providing retail electric service unless the District's Board adopts a finding at the hearing based on substantial evidence that it can provide retail electric service at a 15% discount from PG&E's forecasted rates then filed with CEC for the first 10 years." Condition No. 4 to SJ LAFCo Approval.

the District can provide retail electric rates that are 15% lower than PG&E's. Some of the reasons for this include:

- SSJID does not pay dividends to shareholders;
  - SSJID has fewer layers of management and its upper management is paid substantially less than PG&E's;
  - Its rates are limited to the cost of services without a profit margin and are set by the District's locally-elected Board in public meetings;
  - As a public entity of the State of California, SSJID does not pay taxes;
  - SSJID is eligible to issue debt that is exempt from federal income tax, making it cheaper to invest in the system's infrastructure.
- **Improving and stimulating the local economy**: On a national basis, investor-owned utility customers pay average electricity rates that are about 13% more than those paid by public power customers.<sup>9</sup> In California, an investor-owned utility customer on average pays 16.5% more per kWh than a public power customer.<sup>10</sup> SSJID's lower rates would provide economic benefit to the communities within the service areas and, due to an increase in disposable income which will increase spending, create additional jobs.<sup>11</sup>
    - SSJID's plan will provide additional economic stimulus to the local communities beginning with an annual amount of approximately \$15.5 Million commencing in the first year of operation and increasing

---

<sup>9</sup> American Public Power Association 2013 Statistical Report.

<sup>10</sup> 15.5¢ vs. 13.3¢; APPA 2015-2016 Annual Directory and Statistical Report, citing Department of Energy Information Administration, Form EIA-816, 2013.

<sup>11</sup> SSJID Municipal Services Review Revised 9/9/2014, p. 21; see also evaluation and opinion of Dr. Jeffrey Michael on the benefits to the local economy, *infra* at Section II.h.

- thereafter<sup>12</sup>;
- Increasing jobs and job opportunities in the local communities (see discussion in Section II.h, *infra*);
  - More equitably distributing the benefits of SSJID's co-ownership of the Tri-Dam Project and Tri-Dam Power Authority (collectively "Tri-Dam")<sup>13</sup> and other low cost hydroelectric generation facilities.<sup>14</sup> Moreover, these assets will help protect SSJID from future volatility in electric prices and other potential uncertainties;
  - Utilizing SSJID's significant cash reserves to provide the greatest long-term benefit to the local ratepayers and communities SSJID serves.
- **Customized Public Benefits Spending:** SSJID will customize public benefits programs to the particular needs of the local communities it serves. The SSJID Board would be able to determine the funding level for these public purpose programs and select the programs that best address and are most responsive to the specific needs of the customers in this community and implement the programs with locally-based personnel. PG&E cannot do this, as it establishes priorities based on the needs of PG&E's entire Northern California service area.

---

<sup>12</sup> The first year's savings assumes that 2017 is the first year of operation with a minimum 15% rate discount (at page 32, Table 1, *infra*).

<sup>13</sup> The Tri-Dam Project refers to the three dams, Donnell's, Beardsley, and Tulloch, and associated power houses and facilities with installed capacity of approximately 110MW owned and operated by SSJID and OID under a joint exercise of powers agreement. SSJID is 50 percent owner of the Tri-Dam Project. The Tri-Dam Power Authority is a joint powers authority that owns 19MW of generating capacity at the Sand Bar Project. SSJID is also a 50 percent owner of the Tri-Dam Power Authority.

<sup>14</sup> In addition to its ownership interest in the Tri-Dam Project and Tri-Dam Power Authority, SSJID owns two hydroelectric generation projects with 8MW of capacity at the Woodward Reservoir.

### **c. District and Project History**

Since its formation in 1909, SSJID has provided irrigation water service to those portions of southern San Joaquin County within its service territory (approximately 72,000 acres). During this time, it has played an integral role in the development and growth of San Joaquin County. SSJID is among a very few special districts, within either San Joaquin County or California, that acquired water rights and developed their own diversion works, dams, storage reservoirs and hydroelectric generating projects. It owns senior water rights on the Stanislaus River, most of which are co-owned with Oakdale Irrigation District ("OID"), dating back as far as 1853. Since 1909, it has expanded the scope of its services and currently provides irrigation, treated water, raw water, wholesale electricity and electric utility operating and consulting services.

SSJID is uniquely capable of providing reliable electric service responsive to the needs of the local communities it serves. It has a history of providing essential public services to the homes, farms and businesses within its territory and has the necessary assets, experience and financial capability to increase these services to include retail electric service.<sup>15</sup>

For the past 16 years, beginning in earnest in 2004, SSJID has been pursuing its plan to provide retail electric service to its customers. In 2004, the Board adopted a set of principles to serve as the foundation for decisions the Board would make in

---

<sup>15</sup> The Municipal Service Review/ Sphere of Influence Report, prepared for SSJID's application to LAFCo for a change in organization to provide retail electric service (*see infra* at Section II.d) made the following finding regarding the District's management and operation capabilities: "SSJID has a good track record of managing and operating its irrigation, water treatment, agricultural drainage and electric generation facilities. The District maintains rules and policies that provide direction for the management of District employees, property and equipment. Based on past performance it can be reasonably assumed that SSJID will continue to effectively manage and operate its irrigation, water treatment and electric generation facilities." Municipal Service Review/ Sphere of Influence Report, at p. 185 (Exhibit K); MSR Addendum, at pp. 50, 68 (Exhibit L).

determining how to best leverage and equitably allocate the benefits of the Tri Dam Project. The principles include seeking:

- To optimize the economic benefits of the Tri Dam Project;
- To leverage the benefits and optimize the long-term value of funds appropriated;
- The most expedient opportunity to provide benefits to the broadest possible constituents within the District, and to do so with no risk or adverse effect on the core agricultural water delivery service enterprise;
- To implement any selected strategy to allocate this economic benefit based on clear statutory authority.

Building on these principles, the Board concurrently adopted a list of goals to provide guidance to SSJID management in developing options for the Board to consider. The key goals were to enhance the principles of "home rule" and local control and to dedicate the Tri Dam economic benefits to the agricultural water interest of SSJID, with an amount to be dedicated to the development of the electric benefit programs. (See Exhibit B, Board of Directors' Statement of Principles and Goals (August 2004).)

In 2004, the Board considered various alternatives to provide relief to its customers from PG&E's high electric rates. The various options considered were:

- Credits on PG&E customers utility bills;
- Direct cash payments to customers;
- Duplication of facilities;
- Community Choice Aggregation;
- Acquisition of PG&E's facilities;
- Non-wires/Virtual Utility; and



- Focusing on new generation facilities.

The Board found that the acquisition of PG&E's facilities was the superior option based on its adopted principles and goals. (See Exhibit B, Board of Directors' Statement of Principles and Goals (August 2004).)

**d. San Joaquin County LAFCo's Approval Of SSJID's Application For Change Of Organization To Provide Retail Electric Service**

The first regulatory step in the process to provide retail electric service was to obtain the approval of the San Joaquin County Local Agency Formation Commission ("LAFCo") to expand the scope of the services SSJID provides within its existing service territory to include retail electric distribution service. This effort began in 2004 and was completed in December 2014, when LAFCo approved SSJID's application to provide retail electric service.

During LAFCo's review and approval process of SSJID's application, PG&E articulated criticisms of the Proposed Project. A summary of PG&E's criticisms presented over the course of the LAFCo proceedings is found in Exhibit C.

**1. 2009 Application to LAFCo**

On September 3, 2009, SSJID submitted a Justification of Proposal and Application ("Application") to LAFCo for authority to exercise its latent power and include a new service - retail electric service within SSJID's existing service territory.<sup>16</sup> The Application stated that SSJID has "sufficient revenues" to carry out retail electric service and such new service would yield substantial public benefits, including reducing rates by 15% from PG&E's current rates, increasing jobs, improving the local economy, and establishing local control of electric service, rates and policies.

---

<sup>16</sup> In 2004, SSJID submitted an earlier application for its retail electric project, which was denied by LAFCo.

## 2. Valuation and Financial Feasibility Issues

In support of its Application, SSJID submitted an Appraisal Report prepared by R.W. Beck, dated August 2009. R.W. Beck valued PG&E's distribution assets to be acquired by SSJID at \$85 million. On behalf of PG&E, Black & Veatch prepared a report titled, *Estimating the Fair Market Value of PG&E's Retail Electric Utility Assets in the Area South San Joaquin Irrigation District Proposes to Serve*. Black & Veatch concluded that the distribution assets in question were valued at \$438 million.

LAFCo retained PA Consulting Group, Inc. ("PA") to appraise the market value of PG&E's distribution assets located in SSJID's service area. As part of PA's retention, it reviewed and commented on the appraisals from SSJID and PG&E, as well as reviewed and assessed the viability of SSJID's business plan and ability to achieve one of SSJID's anticipated benefits from the Proposed Project - a 15% rate discount.

PA submitted its report in May 2010. PA found that the income approach relied on by R.W. Beck had flawed assumptions which resulted in a lower valuation. PA also found that Black & Veatch's use of Replacement Cost New Less Depreciation and Going Concern value had flawed assumptions, which resulted in a higher value. PA concluded that the mid-range of value of PG&E's distribution assets to be acquired by SSJID was \$218 million.

With regard to SSJID's business plan, PA found that SSJID's plan was operationally feasible but the purchase price for PG&E's electric distribution assets would make the plan financially infeasible unless SSJID invested \$186 million in initial equity. PA also found that SSJID's projected cost of power was understated in the long run and, therefore, the Proposed Project would result in higher rates.

On September 15, 2010, SSJID submitted a Supplement to its Application and noted that PA's analysis would have produced a different result if PA had utilized SSJID's

surplus cash from retail electric operations, applied wholesale power costs projections to PG&E's retail rates, and had SSJID make an initial contribution in equity from its cash reserves followed by annual equity contributions from SSJID's Tri-Dam revenue. In its Supplement, SSJID maintained that it could still provide retail electric service at a 15% discount.

PA issued a second report in February 2011, wherein it analyzed SSJID's Supplement and concluded that SSJID would need to reinvest the retail electric excess operating revenue, applied PA's wholesale power costs projection to PG&E's retail rates, and contribute \$39 million of equity up-front and \$15 million on average per year over the term of the business plan in order to achieve a flat 15% rate discount to PG&E rates.

In response to the February 2011 PA report, SSJID's Board adopted Resolution 11-03-E, wherein SSJID committed to contribute the necessary capital to achieve a 15% discount, up to and including an average of \$15 million annually, as determined by PA. SSJID also filed a Second Supplement to its Application in September 2012, in which SSJID explained that its share of Tri-Dam revenues (as projected by PA) was sufficient for SSJID to provide retail electric service at a 15% discount from PG&E's rates.

Also in response to the two PA reports, SSJID retained MRW Associates, LLC ("MRW") to prepare an analysis of the financial feasibility of SSJID's retail electric service plan. MRW prepared its initial report in September 2013 and an updated report in November 2014. MRW conducted a comprehensive analysis of SSJID's retail electric service plan and concluded in its November 2014 updated report that

SSJID had “sufficient revenue” to carry out retail electric service and could achieve at least a 15% discount without any ongoing equity contributions.<sup>17</sup>

### **3. Municipal Services Review/Sphere of Influence/Environmental Impact Report**

The Municipal Services Review (“MSR”), prepared by Mintier Harnish, addressed the District’s ability to provide retail electricity within the proposed service area, and it provided one of the bases for LAFCo’s approval of SSJID’s change of organization to provide retail electricity.

The MSR’s assessment addressed six categories for which LAFCo rendered written determinations. Three of these categories relate to the findings that need to be made for the proposed RON, those of public use and necessity and more necessary public use of SSJID’s retail electric project. Those three categories are:

- Present and Planned Capacity of Public Facilities and Adequacy of Public Services (Preliminary Revised Draft Sphere of Influence Plan/Municipal Service Review (published March 4, 2014, revised September 9, 2014) (“MSR Report”), Chapter 4, 4.C. Electric Generation Supply and Transmission, at p. 80).
- Financial Ability of Agencies to Provide Services (MSR Report, Chapter 5, at p. 125; Addendum to Draft Sphere of Influence/Municipal Service Review (November 2014) (“MSR Addendum”) at p.62).

---

<sup>17</sup> MRW’s financial analysis was the only analysis in the LAFCo proceedings which was subject to independent peer review by another financial expert. Michael Bell Management Consulting (“MBMC”) was retained by Mintier Harnish, who prepared the Municipal Service Review and Sphere of Influence report for LAFCo to complete this peer review. Mr. Bell concluded that MRW’s analysis was based upon sound data sources and reasonable and realistic assumptions.

- Accountability for Community Service Needs, Including Governmental Structure and Operational Efficiencies (MSR Report, Chapter 7, at p. 175; MSR Addendum at p.68).

LAFCo also had prepared, as required by CEQA, a Draft Subsequent Environmental Impact Report ("Draft EIR") which evaluated four separate actions under consideration by LAFCo, including the approval of SSJID's proposal to expand its existing services to provide retail electric service. The Draft EIR described the Proposed Project as follows: "SSJID plans to acquire the electric distribution facilities currently owned, operated and used by Pacific Gas and Electric Company (PG&E) to provide retail electric service to end users within the SSJID territory." (Final EIR, p. A-1) The Draft EIR and the subsequent Partially Recirculated EIR were circulated for public comments.

#### **4. December 2014 LAFCo Hearing**

On December 10 and 11, 2014, LAFCo conducted a two-day public hearing on four matters connected to SSJID's Application:

- Environmental Impact Report
- Annexation of an 80-acre island
- MSR/SOI and Expansion of SSJID's SOI
- SSJID's Retail Electric Service Plan

SSJID, PG&E, their respective witnesses, and members of the public testified at the two-day hearing before LAFCo. In addition, the cities of Manteca, Ripon and Escalon each adopted a resolution in support of SSJID's retail electric project application.<sup>18 19 20</sup> At the conclusion of the hearing, LAFCo issued Findings and

---

<sup>18</sup> City of Manteca Resolution No. R-2009-345 (Exhibit D).

<sup>19</sup> City of Ripon Resolution No. 09-76 (Exhibit E).

<sup>20</sup> City of Escalon Resolution No. 02-10 (Exhibit F).

Conditions and approved SSJID's Application.<sup>21</sup> On December 11, 2014, the LAFCo Commissioners voted to certify the EIR, approved the annexation and adopted the MSR.

LAFCo found that the Application sought authorization to add retail electric service to those services provided by SSJID and that SSJID had the administrative, technical and financial ability, as well as "sufficient revenues" to provide retail electric service in its service territory, as required by Government Code section 56824.14. LAFCo also found that SSJID's retail electric project would provide public benefits including, "a reduction in retail electrical energy rates, more disposable income for local residents to spend with local merchants, the enhanced attractiveness of the area to new employment generating businesses due to lower electrical rates, a more diversified local tax base due to new business generation and improved local control over electrical rates and service."<sup>22</sup> LAFCo further concluded that determination of whether SSJID could achieve the 15% discount was not a matter that fell within the ambit of authorization sought by SSJID nor was it within the authority of LAFCo to make such a determination.

On March 12, 2015, LAFCo passed and adopted Resolution No. 1327, authorizing the change of organization for SSJID's proposal to provide retail electric service. LAFCo's findings and its conditions of approval were incorporated by reference in the resolution. (See Exhibit O, LAFCo Resolution No. 1327.)

On February 13, 2015, PG&E filed a complaint and petition in San Joaquin Superior Court titled "*Pacific Gas & Electric v. San Joaquin Local Agency Formation Commission, et al.*" SSJID is named as the real-party-in-interest in that case. PG&E seeks judicial review of LAFCo's findings, conditions and approval of SSJID's

---

<sup>21</sup> SJ LAFCo's December 11, 2014 Findings and Conditions (Exhibit H).

<sup>22</sup> Findings 4 and 5, adopted by LAFCo on December 11, 2014.

retail electric plan and the certification of the EIR. That litigation is currently pending in the Superior Court.

PG&E filed motions for summary adjudication on some of its causes of action and the Court denied those motions, ruling in favor of LAFCo and SSJID and against PG&E. Although some of the causes of action remain alive, our counsel is optimistic about the outcome of that lawsuit. Moreover, the condemnation process can continue unless and until LAFCo's approval is overturned -- an event which our counsel believes is unlikely given the current status of the litigation.

**e. Summary of Service Plan**

SSJID's plan to provide retail electric service within its boundaries consists of the following primary elements:

- Acquisition of the existing electrical distribution system owned by PG&E, as necessary, to serve all customer loads within SSJID's service territory;
- Construction of facilities necessary to separate the distribution system to be operated by SSJID from PG&E's remaining system;
- Construction of additional electrical facilities necessary to provide reliable service to all electrical customers;
- Sale of taxable and nontaxable debt to finance the purchase and all necessary capital costs;
- Employment of approximately eighty-eight (88) new permanent employees as part of the electric utility staffing plan and additional personnel required for start-up operations, as needed;
- Purchase of necessary equipment, inventory and supplies;

- Contracting for necessary power supplies;
- Reducing retail electric rates by a projected 15 percent; and
- Customizing the public benefit programs currently offered by PG&E to better meet the needs of the local community.

SSJID will implement a balanced energy portfolio, including compliance with resource adequacy standards and renewable energy supplies through transactions in wholesale markets. Transmission service will come from the California Independent System Operator ("CAISO") and/or the SMUD<sup>23</sup>/WAPA<sup>24</sup> control areas.

**f. Engineering Plan to Provide Retail Electric Service**

SSJID has prepared various engineering studies to assess its ability to provide retail electric service through the acquisition of PG&E's electric distribution network system. Starting in 2004, the District retained Dr. Nelson J. Bacalao, a Consulting Manager with the international engineering firm of Siemens Industry, Inc., Siemens Power Technologies International ("Siemens") with expertise in the planning, construction and operation of electrical distribution systems to lead a team of experts to undertake a comprehensive analysis of PG&E's distribution system within the District's service territory and adjacent areas.<sup>25</sup>

Based on a field inventory, Siemens prepared detailed descriptions, diagrams and maps of PG&E's distribution network, determined the assets to be acquired by SSJID and the assets to remain with PG&E. To determine separation impacts (also called severance), Siemens conducted an analysis of the adequacy of PG&E's

---

<sup>23</sup> Sacramento Municipal Utility District

<sup>24</sup> Western Area Power Administration

<sup>25</sup> Dr. Bacalao and several of his current team of professionals joined Siemens in 2006. The work they performed for SSJID before that time was done while the team was part of TRC Global Management Solutions.



network and determined the facility improvements required to separate the District's new system and customers from PG&E's remaining system and customers, and the related costs. The separation plan was developed by a detailed network analysis and investments were selected so that both systems (PG&E and SSJID) will have, in general, similar or better reliability after separation and be in compliance with industry-accepted reliability standards.

Siemens' analyses are contained in its primary reports: *Distribution Network Inventory and Severance Issues Report*, dated February 2010 ("Siemens 2010 Report") (Exhibit Z) and *SSJID 2015 Distribution Network Inventory, Severance Plan and Cost Estimation*, dated May 5, 2016 ("Siemens 2015 Report") (Exhibit W). Both reports are incorporated herein by reference and a part of the Record of Proceedings but are not subject to public disclosure pursuant to 6 U.S.C.A. section 133 (*Critical Infrastructures Protection Act*) and 18 U.S.C.A. section 388.13 (*Critical Energy Infrastructure Information*) and California Government Code sections 6254(k) and 6255.

Below is a brief summary of Siemens' analysis and conclusions.

### **1. Inventory of the Assets of PG&E's Electrical Distribution System**

In 2004, the District retained Siemens to develop the initial inventory of the assets comprising PG&E's distribution network and substations within and surrounding the SSJID service territory. At the end of 2008 and 2009, Siemens did a substantial update to the inventory which is summarized in the Siemens 2010 Report. That report describes the total inventory of the assets to be acquired by SSJID, the assets to remain with PG&E, and the estimated age of the inventoried assets.

The inventory methodology used by Siemens consisted of a two-phased approach: Phase 1, the actual field inventory, and Phase 2, an in-office production of drawings,

network analysis and computation of the inventory. The inventory comprised the medium and low voltage distribution network assets (e.g., overhead lines, underground cables, poles, overhead and underground transformers, switches, capacitors, regulators, meters, etc.). The Medium Voltage overhead lines and equipment were reported directly as observed in the field; for underground facilities, a combination of observation of pad mounted equipment, subsurface equipment location and engineering estimation of the interconnecting system was utilized. Low voltage facilities and poles were estimated via extrapolation of a representative sample and meters were estimated based on customer count.

The inventory also included the distribution portions of PG&E's Manteca and Ripon substations which are to be acquired for the successful implementation of the separation plan.

Some of PG&E's distribution assets located outside of the District's service territory were included in Siemens' inventory list to the extent Siemens determined they may be impaired as a result of the separation plan. For example, Siemens studied the impact of SSJID's acquisition of PG&E's distribution system on three substations (Riverbank, Avena and Vierra) located outside its service territory. Although these substations are not being acquired, they will become unloaded, *i.e.* part of their loads will be transferred over to SSJID's distribution system, and the assets will then be underutilized for a period of time. Siemens determined the impairment level for each of these three substations. In addition, Siemens identified small sections of PG&E's remaining distribution lines that will terminate at the border and will remain open or with much reduced load, resulting in the impairment of these assets.

In January 2014 Siemens conducted a limited inventory update focusing on new subdivisions added to the system, and commercial malls, as well as new identified irrigation loads. The main results of this inventory were provided in a report titled *2014 Inventory Update Prepared for South San Joaquin Irrigation District* (Exhibit X).

In December of 2015, Siemens, under a right of entry agreement with PG&E, gained access to the substations in the system and inspected all substation equipment related to the 17kV distribution system. As a result of these inspections, Siemens updated the substation layouts, inventory and rating of equipment and age. Siemens also inspected a wide selection of underground enclosures in the distribution system in order to update the inventory and validate some of the assumptions previously made. (Exhibit BB.) In March 2016, Siemens conducted a detailed review of SSJID's service territory border where it identified additional assets to be acquired by SSJID. This inventory update was based on the current plan that PG&E will continue to provide service to its customers south of the District's service territory.

Siemens' list of PG&E's inventory to be acquired by SSJID is contained in Appendix A of the Siemens 2015 Report.

In addition to updating the inventory, Siemens updated the cost estimates for the acquisition of PG&E's distribution assets. It estimated unit prices for the different components of the overhead and underground networks and for the Manteca, Ripon, Avena, Vierra and Riverbank substations. These unit prices were used by SSJID's appraiser Nancy Hughes, ASA, of NewGen Strategies & Solutions ("NewGen Strategies"), to value the assets to be acquired from PG&E, and the impairment and the separation costs for the distribution network and substations. Section 5 of the Siemens 2015 Report explains the cost estimation methodology Siemens utilized to arrive at its Reproduction Cost New estimated value of the assets.

## **2. Severance/Separation Plan**

In order to formulate the separation plan of SSJID's proposed distribution system from PG&E's existing system, Siemens analyzed PG&E's current network configuration to assess its adequacy and performance. This provided the basis for Siemens to produce a separation plan that minimizes costs and disruption to

customer service while maintaining or improving the quality of service and keeping all customers' service within accepted industry practices and standards.

The Siemens 2010 Report contains a Severance Plan (Section 5) describing how SSJID's new system would achieve separation from PG&E's system along the border of SSJID's service territory and the necessary investments to the substations and to the network inside the service territory and along its perimeter, so that SSJID can provide service to its customers inside the service territory and PG&E can continue providing service to its customers outside the territory, while maintaining current service conditions, within industry-accepted levels of reliability. The severance plan proposes the construction of a new substation (Jack Tone substation) and the expansion of Manteca, Ripon and Clough substations, with the addition of new feeders and transformers.

Subsequent to the 2010 Report, Siemens continued to study and assess the separation of the two systems and, in July 2011, Siemens updated the severance plan reflecting that the Modesto Irrigation District ("MID") would not provide retail electric power services (MID to Commercialize) to customers south of the SSJID service territory and those customers would remain with PG&E. See Exhibit Y. This became the main plan for separation and with some updates discussed below, is the plan in place.

Based on the December 2015 substation inspections and the detailed review of SSJID's service territory border, Siemens updated the severance plan and associated costs as well as the impairment costs. The results of these updates are contained in the Siemens 2015 Report (Exhibit BB), Section 4 (Severance Plan), Section 7 (Separation Costs) and Section 8 (Impairment Costs).

The severance plan primarily consists of three projects:

- **Southern Underbuilds:** This project consists of the "underbuilds" required for the reconnection of the loads south of SSJID's service area that are to

remain with PG&E and are not being commercialized by MID. This separation will be achieved by installing two main underbuilds connected to the Vierra and Riverbank substations, as well as a third transformer at the Ripon substation that will remain with PG&E. The loads south of the territory will continue to have similar levels of reliability as they currently have.

- **Reconnection of Loads Formerly to be Commercialized by MID:** This project is designed to supply a number of isolated loads that no longer will be commercialized by MID and need to be reconnected to the PG&E system. These investments are a combination of underbuilds and new sections of line.
- **Reconnection of Other Loads to the North:** This project is designed to provide power to other loads largely in the area north of SSJID's service territory that are outside of MID's competition zone, and are to be reconnected to PG&E's system. They consist of underbuilds and new sections of line. The investments to reconnect these loads are part of the original severance plan and were updated based on the inspection carried out in 2015.

Note that whenever an underbuild is proposed, it requires the demolition of existing sections of overhead lines plus the installation of new feeders with two circuits; the lower to remain with PG&E and the upper to be used by SSJID.

The plan explains how the assets of the Manteca and Ripon substations will be separated to allow for SSJID's proposed acquisition of the distribution portions of the substations. The plan for Manteca is to separate the 17 kV yard with SSJID's proposed side of the substation dedicated to distribution and PG&E's remaining side used for transmission. The SSJID side includes the 115 kV / 17 kV transformers, which will be connected to PG&E's 115kV facility. The plan for Ripon is similar and proposes to divide the substation yard with SSJID's proposed side to be dedicated to distribution and PG&E's remaining area to be used for transmission. Similarly, SSJID will only own the 17 kV facilities and the 115 kV /17 kV transformers which

will be connected directly to PG&E's side of the substation via a remote operated disconnect switch. At the Ripon substation, there will be a connection point for the underbuilds for PG&E to continue to provide service to PG&E's loads south of SSJID's service territory. This point is envisioned to be provided via a dedicated 115 kV/17 kV transformer that will remain with PG&E.

In addition to the Siemens 2010 Report and the Siemens 2015 Report discussed above, the following is a list of other relevant reports and memos prepared by Siemens, which are part of the Record of Proceedings and incorporated by reference in this Staff Report, but are not subject to public disclosure pursuant to 6 U.S.C.A. section 133 (*Critical Infrastructures Protection Act*) and 18 U.S.C.A. section 388.13 (*Critical Energy Infrastructure Information*) and California Government Code sections 6254 (k) and 6255:

- *Network Configuration and Investments Report (2005) (Exhibit AA)*
- *SSJID Distribution Inventory & Severance Study; Plan to Supply Consumers Outside SSJID's Service Territory if MID to Commercialize Option is Unavailable (2011 separation update) (Exhibit Y)*
- *2014 Inventory Update Prepared for South San Joaquin Irrigation District*
- *Enclosure/PAD Mounted Inspections Memo (December 2015) (Exhibit BB)*
- *Manteca, Ripon, Vierra, Riverbank and Avena inspection summary (December 2015) (Exhibit CC).*

**g. SSJID's Plan To Provide Retail Electric Service Is Financially Feasible**

**1. Overview of Financial Feasibility Analysis**

As summarized above, SSJID obtained LAFCo's approval of the Proposed Project in December 2014. In the course of the LAFCo application process, SSJID retained experts to prepare an inventory and an appraisal of the PG&E distribution system to

be acquired. The inventory and the appraisal have been updated on several occasions, the most recent of which was for purposes of the summary appraisal statement and recent offer to purchase provided to PG&E (Exhibit P).

The District also retained additional experts to evaluate the District's financial feasibility to provide retail electric service. MRW, a consulting firm widely respected for its technical and financial analysis of complex regulatory and retail market issues relating to California utilities and which has been engaged by both the CPUC and the California Energy Commission to evaluate highly technical utility issues, prepared a financial analysis of the proposed retail electric project. First retained in 2012, MRW has prepared financial feasibility studies for SSJID in 2013, 2014 and 2016. The studies consider the key factors that will influence SSJID's ability to meet its objectives of providing retail electric service throughout its existing service territory and to do so at a projected 15% discount to PG&E's rates. MRW's 2013 study, while adopting conservative assumptions, found that it would be feasible for SSJID to provide electric service at a 15% discount on PG&E's rates. During 2014, MRW engaged with PG&E and LAFCo staff in a LAFCo-led process to mediate the gap between the MRW and PG&E financial assessments. As an outcome of this process, MRW modified certain assumptions to make the 2014 analysis even more conservative and also updated the analysis to reflect recent market and regulatory developments. MRW submitted the updated assessment to LAFCo for use in the December 2014 hearings. The 2014 financial analysis found SSJID's plan to be financially feasible and robust.

MRW completed a further update to the financial analyses for the Board's consideration at the RON hearing. MRW's latest study uses the same sophisticated approach as in the prior analyses, but includes a number of methodological changes to take advantage of new information, including information on the cost of power, PG&E's retail rates, customer energy sales, distributed generation usage, and applicable laws and regulations. The financial analysis demonstrates that SSJID's

retail electric service operation is expected to generate sufficient revenues to cover all expenses of providing electric service, including operations and maintenance, power purchases, and debt service on borrowings to pay PG&E the purchase price of its distribution system and planned capital expenses.

By providing retail electric service at a projected 15% discount, SSJID will be able to provide significant economic benefits to customers throughout its local communities without negatively impacting the rates charged to its irrigation customers. MRW's analysis provides reasonable assurance that the retail electric service plan can be expected to be self-sustaining while providing this level of discount, and the District's other sources of revenue and cash reserves provide assurance against unexpected retail electric expenses. MRW's most recent financial analysis and results are in Exhibit Q, *South San Joaquin Irrigation District Retail Electric Financial Analysis* (June 2016).

## **2. SSJID's Ability to Provide Retail Electric Service At A 15% Discount**

The MRW financial analysis shows that SSJID can provide retail electric service at a 15% discount without impacting irrigation rates. There are two key factors which make the Proposed Project financially feasible and enable SSJID to provide significant benefits to ratepayers and the communities SSJID proposes to serve: (1) the inherent fundamental economic advantages small publicly-owned utilities have over very large investor-owned for-profit utilities, and (2) SSJID's unique economic characteristics.

Lower rates are typical of public power retail electric utilities for several reasons:

- Public power utilities are not-for-profit. Investor-owned utilities set their rates to recover an authorized rate of return on rate base in order to provide a profit to their shareholders. Because public power utilities do not have



- shareholders their rates do not need to include an amount for profit to shareholders;
- As not-for-profit organizations, public power electric utilities do not pay income taxes. An investor-owned utilities' rates include the cost of their income tax liabilities;
  - The interest paid by an investor-owned utility on its debt is taxable to the creditor. The interest paid by a public power utility is nontaxable. For this reason, lenders to a public power utility will accept a lower interest rate. The effect of this difference is that the public power utility's rates can be lower because their debt service is less than an investor-owned utility's debt service would be on the same amount of debt;
  - In some cases, especially in the western United States, public power utilities are given preferential access to low-cost hydroelectric power from federal dams.

For these reasons, public power utilities typically have lower electric rates, and also for these reasons we can expect SSJID to have lower rates than PG&E.

SSJID's unique economic characteristics include:

- SSJID's annual cash distributions from its ownership interest in the Tri-Dam Project hydroelectric projects and in the Tri-Dam Power Authority which owns the Sandbar hydroelectric project;
- SSJID's cash reserves from its varied sources of revenue, particularly from its share of Tri-Dam revenue, provide financial assurance against unforeseen expenses;

- SSJID also possesses a AA credit rating from Standard and Poor's Ratings Services, last updated in November 2015, that will substantially aid it in issuing debt at favorable rates and securing power purchase agreements.

### **3. SSJID's Plan To Provide Retail Electric Service Is Financially Feasible**

The MRW financial analysis demonstrates that SSJID's plan to provide retail electric service is financially viable and self-sufficient using assumptions that are reasonable, but conservative. Revenues exceed expenses, including debt service and capital expenditures in every year. The results of the financial analysis for the initial years are summarized in Table 1. The key elements of the analysis are (i) revenues, (ii) expenses, (iii) costs to operate, maintain and improve the distribution system, and (iv) debt service to pay for the purchase of PG&E's distribution assets. Net cash flow after accounting for all expenses is positive in each year. In addition, in each year SSJID meets the requirements for a minimum of 120 days cash on-hand and a debt service coverage ratio of at least 1.25 without requiring any annual equity contributions. The value of the 15% rate discount is \$15.5 million in 2017 the assumed first year of operation and increases to \$19.1 million by 2026.

The following are some key factors in understanding the results of the financial analysis:

- The financial analysis calculates operating revenues (based primarily on a 15% discount from PG&E's projected rates), and operating expenses and other expenses, including capital costs and debt service, over both 10-year and 30-year analysis periods.
- The analysis evaluates whether two key requirements are satisfied: (i) a debt service coverage ratio of revenues to expenses of at least 1.25 and (ii)

minimum cash on-hand in the reserve fund to cover 120 days of retail electric operating expenses in each year.

- The cash reserve fund, which is initially funded from the debt to be issued by the District to finance the purchase and severance costs for the distribution asset acquisition, and certain start-up costs, increases in years when retail electric revenues exceed costs and is reduced in years when costs exceed revenues.

MRW's financial analysis shows that retail electric service is feasible because cash flow is positive and the debt service coverage ratio and minimum days cash on-hand standards are met every year for thirty years. Moreover, supplementation by the reserve fund is not necessary because revenues exceed expenses in each year. The strength of the analysis' results can be shown in several ways. Table 1 shows that the minimum debt coverage ratio is 1.66% and the minimum number of days of cash on hand is 196 days, increasing to more than 5 and a half years over the 30-year period. Furthermore, we have found that retail electric service would still be viable under a range of circumstances more adverse than in the base case, including lower PG&E retail rates and higher expenses for power supply, interest rates on debt, operating expenses, exit fees and capital expenditures. Retail electric service was also found to remain viable when some of these adverse conditions were applied together. Finally, the financial analysis assumes that rates are set at 15% below PG&E's rates. Based on the financial analysis results, it should be expected that the level of discount will be greater than 15% because the District will set rates at a level sufficient to only recover the costs of service, and a 15% discount appears likely to result in an over-recovery of these costs.

In summary, retail electric service will fund itself and will not adversely affect SSJID's ability to continue to provide the services it has historically provided in an efficient,

effective and prudent manner. In addition, SSJID's reserves and other revenues provide assurance against unexpected expenses of providing retail electric service.

| Table 1 (\$000)                          |               |               |               |                |                |                |                |                |                |                |
|--|---------------|---------------|---------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
|  | 2017          | 2018          | 2019          | 2020           | 2021           | 2022           | 2023           | 2024           | 2025           | 2026           |
| <b>Revenues</b>                          |               |               |               |                |                |                |                |                |                |                |
| Revenues from SSJID Customers            | 87,908        | 89,914        | 91,744        | 96,403         | 97,795         | 101,295        | 104,521        | 106,805        | 106,758        | 108,387        |
| Revenues from GHG Allowance Sales        | 2,183         | 2,274         | 2,424         | 2,556          | 2,681          | 2,807          | 2,930          | 3,051          | 3,179          | 3,313          |
| Interest Income                          | 518           | 1,124         | 1,846         | 2,199          | 2,599          | 3,000          | 3,566          | 4,324          | 5,110          | 5,799          |
| <b>Total Revenues</b>                    | <b>90,608</b> | <b>93,312</b> | <b>96,014</b> | <b>101,158</b> | <b>103,075</b> | <b>107,102</b> | <b>111,017</b> | <b>114,180</b> | <b>115,047</b> | <b>117,499</b> |
| <b>Expenses</b>                          |               |               |               |                |                |                |                |                |                |                |
| Cost of Power                            | 38,929        | 39,815        | 40,942        | 42,627         | 44,153         | 45,731         | 47,550         | 49,272         | 50,831         | 52,589         |
| O&M/A&G Costs                            | 14,250        | 14,437        | 14,627        | 14,819         | 15,358         | 15,913         | 16,463         | 16,991         | 17,536         | 18,123         |
| Public Benefit Costs                     | 3,516         | 3,597         | 3,670         | 3,856          | 3,912          | 4,052          | 4,181          | 4,272          | 4,270          | 4,335          |
| Payments In Lieu of Taxes                | 2,198         | 2,248         | 2,294         | 2,410          | 2,445          | 2,532          | 2,613          | 2,670          | 2,669          | 2,710          |
| Exit Fees/Nonbypassable Payments to PG&E | 3,267         | 3,244         | 3,225         | 3,213          | 304            | 273            | 242            | 210            | 179            | 147            |
| <b>Total Expenses</b>                    | <b>62,160</b> | <b>63,340</b> | <b>64,758</b> | <b>66,926</b>  | <b>66,173</b>  | <b>68,501</b>  | <b>71,048</b>  | <b>73,415</b>  | <b>75,485</b>  | <b>77,905</b>  |
| Capital Expenditures                     | 4,391         | 4,516         | 4,651         | 4,806          | 4,981          | 5,161          | 5,339          | 5,511          | 5,687          | 5,878          |
| Debt Service                             | 11,808        | 11,808        | 17,611        | 17,611         | 17,611         | 17,611         | 17,611         | 17,611         | 17,611         | 17,611         |
| <b>Net Cash Flow</b>                     | <b>12,249</b> | <b>13,649</b> | <b>8,994</b>  | <b>11,815</b>  | <b>14,310</b>  | <b>15,829</b>  | <b>17,019</b>  | <b>17,643</b>  | <b>16,263</b>  | <b>16,106</b>  |
| Cash Contributions by SSJID              | 20,436        | -             | -             | -              | -              | -              | -              | -              | -              | -              |
| <b>Cash Reserves Balance</b>             | <b>32,686</b> | <b>46,334</b> | <b>55,329</b> | <b>67,144</b>  | <b>81,454</b>  | <b>97,283</b>  | <b>114,303</b> | <b>131,946</b> | <b>148,209</b> | <b>164,315</b> |
| Days Cash on Hand                        | 192           | 267           | 312           | 366            | 449            | 518            | 587            | 656            | 717            | 770            |
| Debt Service Coverage Ratio              | 4.1           | 2.5           | 1.8           | 1.9            | 2.1            | 2.2            | 2.3            | 2.3            | 2.2            | 2.2            |
| Value of 15% Discount                    | 15,513        | 15,867        | 16,190        | 17,012         | 17,258         | 17,876         | 18,445         | 18,848         | 18,840         | 19,127         |

#### 4. The Financial Model Incorporates LAFCo's Conditions of Approval

In approving SSJID's application to provide retail electric service, LAFCo imposed five conditions of approval. These conditions cover public benefits programs, payments in lieu of property taxes and franchise fees, CARE (low income) rates, determination of the feasibility of a 15% rate discount and service reliability.

##### i. Public Benefits

LAFCo Condition No. 1 requires that SSJID, "shall fund and maintain public benefits programs as required by Public Utilities Code section 385, or as otherwise required by law, as a cost of providing retail electric service with four percent of gross revenues or such amounts as necessary to meet the needs of local customers and to offer public benefits funding equivalent to those maintained by PG&E." In keeping

with the LAFCo condition, MRW's financial analysis allocates 4% of gross revenues to provide public benefits programs.

## ii. **Payments-In-Lieu of Taxes**

LAFCo Condition No. 2 requires that SSJID allocate 2.5 percent of gross retail electric revenues to make payments in lieu of franchise fees and property taxes to San Joaquin County ("County") and payments in lieu of franchise fees to the cities of Manteca, Ripon and Escalon ("Cities") in accordance with agreements to be entered into with those agencies ("PILOTs"). MRW's financial analysis allocates 2.5% of gross revenues for PILOTs.

The Cities and the County currently receive franchise fee revenue from PG&E due to its ownership of utility facilities in rights of way within the Cities and County. The County also receives property tax payments paid by PG&E, which are allocated to the County, to the Cities and to other public agencies within the County. The franchise fee and tax revenues paid by PG&E to the Cities and County will decrease as a result of SSJID's acquisition of existing PG&E distribution facilities within the Cities and County. SSJID will make payments in accordance with agreements to be negotiated with the Cities and County in satisfaction of LAFCo Condition No. 2, which will ensure that SSJID's provision of retail electric service has a revenue neutral impact on the County and Cities. Such payments by publicly-owned utilities to cities and other local agencies in lieu of franchise fees and tax payments are not uncommon and have been upheld by various courts.

While it is not disputed that LAFCo has the power under Government Code section 56886 to require SSJID to make these payments as a condition for approving a change of organization, PG&E challenged the legality of the in-lieu payments in the pending *PG&E v. SJ LAFCo, et al.* case on the grounds that they amount to the imposition of taxes imposed without voter approval, an unlawful gift of public funds, and the improper imposition of a property tax on SSJID. PG&E filed a motion for

summary adjudication on its causes of action pertaining to the PILOTs on those very grounds, and by Order dated March 7, 2016, the Superior Court denied PG&E's motion and held that the Condition No. 2 payments do not pose a present, total and fatal conflict with applicable constitutional prohibitions as it "allows for multiple scenarios and options in terms of funding and/or structuring the payments which will, in turn, affect the characterization of the payments as a 'tax' or a 'gift'". The Superior Court also ruled that PG&E's as applied challenge to Condition No. 2 was not yet ripe for judicial review.<sup>26</sup> SSJID intends to file its own dispositive motions on PG&E's causes of action pertaining to the PILOTs and it is anticipated that PG&E will continue to challenge these payments in its opposition to SSJID's motion. SSJID's motions are set for hearing in October 2016.

### **iii. CARE Rates**

The MRW financial analysis has an assumption that SSJID will offer rates to CARE customers based on the same rate structure as PG&E, with the same level of discount as SSJID would offer to other customers of the same rate class, which is consistent with LAFCo Condition No. 3.

### **iv. Determination of Feasibility**

LAFCo's Condition No. 4 requires that before SSJID takes final action to acquire the PG&E distribution system and begins to provide service, its Board of Directors must determine in a public meeting that it can provide retail electric service at a 15 % discount for the first 10 years based on substantial evidence. It also requires that the Board find that retail electric service will not adversely impact irrigation rates.

---

<sup>26</sup> At a future point in time when the issues are ripe, PG&E will very likely raise its "as applied" challenges to the PILOTs. However, SSJID's counsel believes that it has strong arguments that even "as applied", the PILOTs (1) would not amount to a tax or gift because they can be, and the District intends that they will be, structured so as to be supported by adequate consideration and because they serve a public purpose and (2) are a reasonable cost of SSJID's retail electric service and may properly be passed through to SSJID's customers in its rates without transforming those rates into "taxes" requiring voter approval.

The MRW financial analysis demonstrates that the District can provide retail electric service at a 15% discount for at least the first 10 years, based on the assumptions in the analysis. Because the analysis shows that retail electric service is self-sufficient, irrigation rates would not be impacted. However, the Board will not be in a position to satisfy this condition until such time that all of the assumptions can be updated in accordance with Condition No. 4, including the amount of the purchase price, which cannot be updated until the actual price is determined (either through a negotiated purchase and sale agreement or a valuation trial verdict), and the terms and conditions of financing, as well as exit fees (if any), are known.

#### **v. Service Reliability**

Siemens prepared a plan to sever the electric distribution facilities to be acquired from PG&E's remaining system so that PG&E can continue to serve its remaining customers outside SSJID's boundaries with the same overall reliability as PG&E's current system. Siemens' experts examined the District's boundary to prepare a severance plan with the best available information. It designed solutions as necessary for each customer to continue to be served by PG&E. Siemens determined the cost to build the necessary facilities using industry-accepted resources. MRW's analysis includes the amount Siemens estimated as the cost to build these severance facilities in the debt to be issued by SSJID to acquire the retail electric distribution system from PG&E.

### **5. The Financial Model Relies on Realistic and Conservative Inputs**

The financial model, prepared by MRW, relies on key inputs that are realistic and, in some cases, conservative. MRW's experience in working on matters before the CPUC and with the Energy Commission is particularly helpful in certain of these model inputs. The following is a brief discussion of some of the key inputs in the model.

**i. Purchase Price**

The MRW study uses an acquisition price of \$200 million. At more than twice the updated NewGen Strategies' appraisal value of \$92.7 million, this is a conservative placeholder for the actual purchase price. MRW uses this higher acquisition price to be consistent with its earlier studies and to be conservative in light of the fact that the actual price is not known. The analysis assumes that the asset purchase will be funded solely from debt, without an SSJID cash payment.

**ii. Other Financed Costs**

The financial analysis includes \$34.9 million in taxable debt for separation and impairment costs to be paid to PG&E, about the same value determined in the PA valuation and 1.5 times the NewGen Strategies' value. It also includes non-taxable debt for SSJID's estimated startup costs related to distribution system upgrades and facilities and metering upgrades. In the event that SSJID's cash reserves are not used for the electric utility's starting reserve fund, MRW additionally added in reserve funds needed to meet beginning cash requirements, as calculated from MRW's model, to obtain a total non-taxable debt of \$59.9 million.

**iii. Wholesale Power Costs**

The cost of power is by far the greatest expense, encompassing about 50% -61% of annual costs (including operating expenses, capital expenditures, and debt service).<sup>27</sup> MRW developed a bottoms-up calculation of the power supply cost in the first five years based on its forecast of spot market prices, renewable power prices, and capacity prices. MRW used a Shell Energy indicative power supply quote as the

---

<sup>27</sup> After wholesale power costs, the remaining expenses have a much lesser impact on feasibility. Of the remaining expenses, Operations and Maintenance/Administrative and General costs and debt service are the next largest categories, with O&M comprising 17%-18% and debt service about 9%-20% of annual costs. Capital Expenditures comprise another 6% of annual costs, and the final 7%-11% of costs come from (i) payments to local municipalities to replace taxes and fees currently paid by PG&E, (ii) energy efficiency and other public benefits programming, and (iii) exit fees that SSJID will be required to pay PG&E.



basis for its estimated cost of a 5.75% fee for a full requirements contract. This approach maintains consistency with Shell's price forecast while avoiding the use of confidential data and being rooted directly in MRW's power supply cost assumptions. It involves directly calculating a spot market price from underlying forecasts of gas prices, greenhouse gas prices, heat rates, and plant operational costs. MRW's power supply cost inputs are consistent with those used in its forecast of PG&E's rates.

#### **iv. Revenue Forecast**

The amount of these revenues is established based on forecasts of PG&E's retail rates, discounted by 15% consistent with SSJID's commitment to provide customers a 15% discount off of PG&E's retail rates and SSJID's energy sales. The PG&E rate forecast and SSJID sales forecast are, therefore, also key considerations of this analysis.

MRW developed a PG&E rate forecast based on natural gas prices, renewable power prices, capacity prices, greenhouse gas allowances, PG&E's costs to operate and maintain its generation and distribution assets, CAISO transmission costs, PG&E public programming costs, and other fees. MRW used 10 years of PG&E rate and cost escalation to forecast the escalation for the distribution rate component and for the cost to operate and maintain PG&E's generation assets. Over the 30-year analysis period, MRW forecasts that PG&E's rates will escalate by an average of 3.1% per year in nominal dollars, which is just shy of PG&E's historic annual average rate growth of 3.2% since 2004.

For its forecast of customer energy sales, MRW used an up-to-date sales forecast from the California Energy Commission that includes the most recent energy efficiency and solar PV data, including projections for continued large increases in customer solar. MRW started with PG&E's reported sales to SSJID customers in 2013, and then escalated these sales to 2015 using newly available PG&E data on

2013-2015 sales to customers in the four zip codes that include SSJID jurisdictional areas. Sales growth in subsequent years was forecasted using the California Energy Commission forecast that is specific to the Central Valley Planning Area.

**v. Operations & Maintenance/Administrative & General**

The amount identified in MRW's analysis as Operations & Maintenance /Administrative & General ("O&M") is the subset of operating expenses which are not represented in the other expense lines of the analysis. Specifically, this item includes:

- Operation & maintenance of the distribution system including substations;
- General administration;
- Financial services; and
- Customer accounts and information system

Utility Financial Solutions, LLC ("UFS") was engaged to develop an estimate of O&M for the financial projection.<sup>28</sup>

The estimated O&M expense was developed through an analytical process that included reviewing detailed expenses and trial balances of a number of utilities around the United States. The group of utilities reviewed was subsequently reduced and the focus was directed at public power districts located in California with specific emphasis on utilities located near SSJID. The review considered a number of factors in the comparison including: size of service area, density of service area and number of customers.

---

<sup>28</sup> UFS is one of the largest providers of financial consulting services to utilities throughout the United States. The UFS professional staff includes engineers, accountants and economists that have completed more than 600 cost of service studies, rate studies and financial projections for utilities in 33 states, Alberta Canada, US Territory of Guam and the British Grand Cayman Island.

The study reviewed the relationship between administration and customer accounts expenses and total distribution expenses for reasonableness. Review of comparable utilities administration expenses ranged between 71% and 107% of distribution expenses. For purposes of this analysis, UFS used the upper range of 107% to project costs related to administration, financial service and customer accounts.

Start-up of a new electric utility would likely result in additional costs in the early years of providing services to customers. Examples of these additional costs relate to items such as additional training of staff, consultant fees, purchases of materials and software costs among others. To recognize these potential amounts above the costs of established utilities, all expenses were increased by 5% above the base case projection. MRW phased out this startup premium in years 2 and 3 of the projection period.

The UFS study concluded that first year O&M expense would be about \$14,250,000. MRW escalated the starting O&M amount by an annual growth rate that includes a factor for inflation and a factor for customer and system growth. MRW also phased out the 5% startup premium in years 2 and 3 of the projection period.

MRW's model inputs are the fundamental reason that the model's results are credible. Given the primacy of the wholesale cost of power forecast and the PG&E retail rate forecast, MRW has paid particular attention to developing these forecasts on a consistent basis, so that external drivers that will affect both SSJID and PG&E, such as changes to the cost of natural gas, are applied equally to both entities. In addition, by using conservative inputs for the purchase price and severance costs, the determination of financial feasibility has greater credibility.

## **6. Cash Reserves With Retail Electric Services**

The District's cash reserves are the result of the fiscally conservative and prudent management of SSJID's existing assets and resources by its Board of Directors and the fact that SSJID receives non-operating revenues, particularly its revenues from the Tri-Dam Project and Tri-Dam Power Authority and from the sale of surplus raw water. Its cash reserves at the end of January 2016 were \$52 million and at the end of 2016 are projected to be \$63 million, which enable SSJID to continue providing reasonably priced irrigation, treated water and other services to its existing customers. MRW's financial analysis shows that retail electric service is self-funding and would have its own reserve fund. However, SSJID's existing cash reserves and its share of net revenue generated by SSJID's ownership interest in Tri-Dam provide financial assurance against unforeseen expenses in providing retail electric service.

### **h. Cumulative Savings to SSJID Ratepayers and Benefits to the Local Economy**

As discussed above, SSJID's economic analysis demonstrates that it will be able to provide retail electric service at rates 15 percent below PG&E's rates under a wide range of potential conditions. The lower electric rates SSJID will provide will result in savings to SSJID's customers, including residents, businesses, farmers, industrial customers and government agencies within SSJID's service territory of approximately \$15.5 million in 2017, assuming that is SSJID's first year of service. These savings are expected to continue in increasing amounts thereafter, \$19.1 million in 2026, for a total savings of \$174.5 million over the 10 year period. (See Table 1, *infra*.)

The savings on electric service cost provided by SSJID's Proposed Project are very significant, but do not capture the full extent of the economic benefits of the Proposed Project. SSJID retained Jeffrey Michael, Ph.D., the Director of the Center for Business and Policy Research at the University of the Pacific, to evaluate these

potential economic benefits. Dr. Michael concluded that the economic benefits of lower electricity costs generally result from additional local jobs and income created by the lower rates. As discussed in more detail below and in his report attached to this Staff Report as Exhibit V, the savings in electricity costs to residents and local business owners in SSJID's service area will increase disposable income and, consequently, increase spending in the community, which will in turn create additional jobs and income. In addition, there will be one-time economic impacts from construction spending to sever the existing distribution system from PG&E and prepare for SSJID service. Similarly, the shift of electricity operations and management to local SSJID management from PG&E's corporate management could generate a net gain in local employment. Finally, lower electricity costs may increase the attractiveness of the area to businesses and industry looking for new locations offering reduced electrical rates.

#### **1. Impact of Increased Spending Generated From Lower Electricity Rates**

The savings in electricity costs to residents, commercial/industrial customers, agricultural customers, and local governments will increase disposable income and consequently increase spending in the community, which will in turn create additional jobs and income. For example, based on MRW's estimate that residential customers will see approximately \$8.1 million in direct savings from SSJID's lower rates, and considering that not all such savings will actually be spent (some will be saved), Dr. Michael determined that the direct savings will result in an increase in spending by residential customers of almost \$7.3 million, which will result in the potential creation of 38 additional jobs, \$3 million of total value added to the local economy, and \$5 million of additional economic output. Similarly, savings to agricultural users and local governments will also result in increased savings which

will in turn result in additional jobs, increased value to the local economy, and additional economic output.<sup>29</sup>

With regards to commercial/industrial customers, not all the savings will flow directly into the local economy as many businesses are not locally owned and hence there is a "leakage" of this increased savings (referred to as increased "income" for businesses) outside the SSJID area. Dr. Michael determined that a majority of this increased business income will accrue outside the SSJID area, and estimated that only 29% of the increased income to commercial/industrial users will result in a local economic impact.

In total, the anticipated economic impact of approximately \$15.5 million in electricity cost savings for these four economic sectors will be the potential creation of approximately 56 new jobs, with a total value added of over \$4.4 million to the economy, and an increase in economic output of \$7 million for the first year of SSJID's operation of the electric system. These would be on-going impacts and could increase in future years as the population and economy of the SSJID area grow.

## **2. Impact of Increased SSJID Spending**

In addition to the impact of cost savings, the Project will also provide a temporary boost to the local economy. As discussed in this Staff Report, SSJID will need to separate the electrical transmission system from PG&E, a construction project that will require both labor and materials. While the cost estimate for the construction is not yet known, it will result in increased economic activity for approximately one year.

---

<sup>29</sup> Dr. Michael used the IMPLAN model to analyze the economic development benefits of the Project. The "Impact analysis for PLANing" model was developed in the late 1970-s by the US Forest Service and researchers at the University of Minnesota to estimate the economic impact of land management planning. The software is among the most widely used economic impact modeling system, used by various federal agencies, private firms, and state and local governments.

In addition, SSJID will need to hire employees to administer, maintain and operate the system. Dr. Michael determined that while some of this new spending (i.e., maintenance costs) would simply offset the reduced spending by PG&E, certain management and administration tasks are more likely to occur locally under SSJID management than when service is provided by San Francisco-based PG&E. It is anticipated that this new SSJID hiring will result in a net increase in local electricity transmission and distribution jobs.

### **3. Improved Economic Competitiveness From Lower Electricity Rates.**

Lower electricity costs will also make the SSJID area more attractive to businesses and support local efforts for job creation and economic development. Dr. Michael determined that electricity costs can be an important location factor for some industries, especially those with high intensity electricity needs, and concluded that lower electricity rates can be a contributing factor in attracting manufacturing activity to counties with lower-cost public electric utilities resulting in higher manufacturing intensity and activity in those areas.

In sum, Dr. Michael concluded that, in addition to the approximately \$15.5 million in annual savings to local households, businesses and governments, the Project will result in significant economic development benefits to the SSJID area, which will grow over time.

#### **i. No Negative Impact on Irrigation Water Service**

The economic feasibility study of the operation of retail electric service shows that retail electric service will have no negative impacts on rates charged to SSJID's water customers. SSJID has evaluated the impact of its plan to provide retail electric service on its ability to continue to provide current services and to maintain a prudent level of cash reserves to support the provision of these existing services. As discussed in more detail in Section II.g of this Staff Report, SSJID's financial

analysis demonstrates that it has sufficient financial strength to provide retail electric service without adversely affecting its ability to provide existing services.

SSJID's existing cash reserves and the revenue generated by SSJID's ownership interest in Tri-Dam provide more than sufficient financial support for SSJID's plan to provide retail electric service while ensuring that SSJID will continue to be able to provide high quality, reasonably priced irrigation, treated water, raw water, wholesale electricity and other services to its existing customers.

Moreover, in its Municipal Services Review (March 3, 2014), Mintier Harnish concluded that that SSJID's plan will not impact irrigation, treated water, or drainage customer rates. Specifically, based on the financial analysis prepared by MRW & Associates and SSJID at that time, "SSJID's plan is not expected to cause the District to raise irrigation, treated water, or drainage rates."<sup>30</sup> MRW also came to this conclusion in its June 2016 Financial Feasibility Analysis. (*South San Joaquin Irrigation District Retail Electric Financial Analysis*, MRW & Associates, June 2016, p. 14) (Exhibit Q).

As part of its analysis, Mintier Harnish also noted that "after 2024 net income begins to gradually fall . . . because the District assumes it will keep rates for irrigation service lower than the cost of operations (i.e., the District will continue subsidizing irrigation rates)." "As a result, operating revenues will not keep up with SSJID's projected growth in expenses," however, "[t]his is feasible because cash flow remains positive and reserves continue growing throughout the 30-year projection period. Because this rate assumption is feasible during the 30-year projection

---

<sup>30</sup> Municipal Services Review (March 3, 2014), p.160 (Effect of SSJID's Plan on [Irrigation, Water and Drainage] Customer Rates) (Exhibit K).



period, SSJID would not be compelled to change its policy to subsidize irrigation rates until sometime after 2040.”<sup>31</sup>

As demonstrated by the financial analyses of the Proposed Project, expansion of the services SSJID provides to include retail electric service will fund itself and, therefore, will not adversely affect SSJID's ability to continue to provide the services it has historically provided in an efficient, effective and prudent manner.

**j. SSJID's Capability to Operate And Manage The Retail Electric Project.**

**1. Governing Structure**

SSJID operates under the direction of a Board of Directors elected by voters in the local communities served by SSJID. SSJID's board is comprised of longtime residents of the San Joaquin Valley who are growers, own small businesses, have served local government as school board members and have supported their local communities through community service organizations and in other capacities. This structure – a locally elected Board of Directors comprised of individuals who live and work in the community and are directly accountable to local voters – encourages local participation and increases local control over policy decisions that concern the vital public services provided by SSJID. The result is greater accountability to the people most affected by the decisions made by the SSJID Board – SSJID's customers.

The Board operates under established governance requirements which will apply to its provision of retail electric service. These requirements include the Ralph M. Brown Act (Gov't Code §§ 54950, *et seq.*); the Public Records Act (Gov't Code §§ 6250, *et seq.*); Proposition 218, adopted by voters on November 5, 1996; Proposition 26, adopted by voters on November 2, 2010; and the Political Reform

---

<sup>31</sup> Municipal Services Review (March 3, 2014), p.128.

Act of 1974 (Gov't Code §§ 81000, *et seq.*). The SSJID Board consists of five members. Exhibit U shows the SSJID Board of Directors' districts. The Board also meets jointly with OID as the Tri-Dam Project Board on the third Thursday of each month. Board members are also *ex-officio* commissioners of the Tri-Dam Power Authority, which meets immediately after the monthly Tri-Dam Project meetings. District customers ultimately oversee the provision of public services provided by the District since the District is run by an elected Board of Directors that answers to District residents and customers through an electoral process.

The District maintains Rules and Regulations for its operations, including for distribution of irrigation water, control of system facilities, and employee conduct. The District also has a Hazardous Material Management Program, and Risk Management Plan certifications on file with the San Joaquin County Office of Emergency Services, Spill Prevention Control and Countermeasure Plans on file with San Joaquin and Stanislaus Counties and Emergency Action Plans on file with California's Division Safety of Dams.

**Management Structure:** The General Manager, who is responsible for managing the District's departments, operations, staff, and administration, reports to the Board of Directors. SSJID is organized into five departments that oversee different aspects of the District's operations, facilities, and services. The five departments include: the Finance and Administration Department, Engineering Department, Operations/Water Department, Electrical Department, and Water Treatment Plant. SSJID has 88 full-time employees who are responsible for operations and maintenance, construction, billing and collection for irrigation and water utility services, and wholesale power sales. District employees, other than management and confidential employees, including those at Tri-Dam, are represented by the International Brotherhood of Electrical Workers, Local 1245. (See Exhibit U, SSJID's Organizational Chart.)

**Management and Operations Facilities:** The District maintains its utility operations, including corporation yard, warehouse, administrative, and customer service functions at its headquarters building located on Highway 120 in Manteca. In addition, the District has extensive facilities to support the domestic water program at the Nick C. DeGroot Water Treatment Plant on Dodds Road in the unincorporated Valley Home area of Stanislaus County. The Tri-Dam operations are managed by a separate staff in conjunction with OID in a third facility located in Strawberry, California. SSJID's main distribution canal is controlled through a centralized, computer-based facility. Its irrigation laterals and drainage system are remotely monitored from the same central facility through an extensive Supervisory Control and Data Acquisition system. Its employees schedule the delivery of irrigation water to water customers on a regular rotation continuously during the irrigation season. Regular patrolling of its lands and rights-of-way is designed to control the misuse and waste of water; prevent unpermitted use of its lands and rights of way; prevent water line breaks; improve service reliability; and enforce its rules and regulations.

**Staffing:** SSJID has eighty-eight (88) full-time employees, who handle operations and maintenance, construction, billing and collection for irrigation and water utility services and wholesale power sales.

Per the Draft Business Plan, discussed below, the District expects to hire eighty (80) new employees, fifty-three (53) of them on the electric utility staff. Additional line personnel required for start-up operations will be hired on a contract basis as needed. SSJID currently has twelve (12) employees in its Finance and Administration department. Initially, administrative functions related to the provision of retail electric service (e.g., accounting, human resources) will be handled at SSJID's Manteca office. SSJID is a member of the California Utilities Emergency Association, whose members will provide mutual assistance to SSJID during periods of emergency.

Over the first full year of operations, SSJID expects to adjust its organization based on its actual operational experience with the goal of optimizing economic and operational efficiencies, improving response time, reducing the number and duration of outages, and improving overall customer service satisfaction.

## **2. SSJID's Draft Business Plan**

A draft business plan has been prepared by the District's staff, led by Bere Lindley, Assistant General Manager, and with the assistance of experts and consultants in the electric power industry.<sup>32</sup> (Draft Business Plan New Retail Electric Utility South San Joaquin Irrigation District June 2016 (the "Business Plan"). See Exhibit R.) The Business Plan has been developed based on the best information available at this time. The Business Plan will continue to be further refined, updated, analyzed and developed as the retail electric project progresses forward and more data and information is available. The Business Plan describes how the District will manage and operate the electric utility service for the benefit of its customers.

The Business Plan states the purpose and benefits of the District's proposed "new utility service," which is the Project described herein. The Business Plan describes MRW's financial analysis and projections, covering a 30-year period to capture all the debt service on the initial acquisition debt, and its conclusion that the new electric utility is financially feasible.

The Business Plan generally describes the business process, the setup and operation of the electric utility business and how it is to be governed, organized and managed.

---

<sup>32</sup> The experts and consultants include: Larry W. Dillon, P.E., an energy professional; Laura Norin, MRW & Associates, LLC, a financial analyst specializing in the energy market; Mark Beauchamp, CPA, CMA; President of Utility Financial Solutions, expert on rates, cost of service, and financial projection for utilities.

The Business Plan discusses the physical features of the new electric utility, the substations (the nodes in the power grid connecting the various elements of the electricity supply chain) which SSJID will use, build and/or improve and the distribution system (e.g., the overhead and underground lines, meters and transformers) which carries the power from the substations to the customers. The Business Plan also addresses the design and function of the proposed new headquarters facilities, and the assortment of equipment and other facilities needed to operate the new electric utility.

Other key elements addressed in the Business Plan include:

- power supplies and options available for obtaining a supply of wholesale electricity;
- operating and maintaining the distribution system and substations;
- finance and accounting functions;
- administration services;
- customer services, billing, and Public Benefits Programs;
- proposed use of an Advanced Metering Infrastructure (“AMI”) to enable real time data collection and two-way communications between the distribution utility and its customers; and
- electric rates, subject to maintaining a 15% discount from PG&E's rates.

The Business Plan describes the governance structure for the retail electric system by the Board of Directors, the legislative body of SSJID. It explains the options for organizing management and the potential staffing needs for a new electric utility division (a total of fifty-three employees are expected to be added to the new electric utility division).

Lastly, the Business Plan addresses the “Transition Plan” which describes the major steps and methods of the business process to transform SSJID's current state to the

future status of owning and operating an electric utility, which transition includes the separation of SSJID's system from PG&E's remaining system.

The MSR Report prepared for SSJID's LAFCo application, discussed above in Section II.d, made the following finding on the District's capability to operate the retail electric system in a cost efficient and professional manner:

MSR Finding 78: "SSJID's plan is operationally feasible in that SSJID has management personnel with experience in operating an electrical distribution system of the size that SSJID has proposed, substantial applicable experience in the operation of its water distribution and treatment facilities and a generally realistic staffing and resource plan. Based on an evaluation of SSJID's plan PA consulting group concluded that SSJID has the necessary resources and staffing levels to operate in a cost efficient and professional manner." (MSR Addendum at p. 51, Finding 78) (Exhibit L).

LAFCo's Resolution No. 1327 approving SSJID plan to provide retail electricity adopted this same finding and found that "SSJID has the administrative, technical and financial ability to operate the [retail electric] system."

Also, see Exhibit S, a letter from energy consultant, Larry W. Dillon, P.E., stating that in his opinion the Business Plan, as completed to date, shows a very good understanding of the complexities and requirements of setting up and operating an electric utility and is a good indication that SSJID is capable of starting and operating an electric utility; and a similar supporting letter from Steven J. Klein, P.E. (Exhibit T), with a thirty-seven year electric utility career, finding that, although the Business Plan does not represent the final form that will constitute the ultimate plan, "it is very comprehensive and thorough and demonstrates the dedication of SSJID to covering all the bases... ..serves as an excellent foundation."

### **3. Data Management**

SSJID currently operates irrigation and water treatment facilities. It provides billing and customer service to its customers and the customers of a nearby electric utility through state-of-the-art software, capable of retail electrical billing.

SSJID manages and operates an accounting and billing system using Customer Information System ("CIS") software. This system is operated from the District's central office in Manteca. This CIS software has: improved the accuracy and timely accounting and invoicing of sales and services; enhanced the current utility system accounting, mapping, and management protocols; and integrated the water treatment program within the irrigation enterprise.

SSJID, in its Business Plan, is proposing the use of AMI, which is an integrated system of digital meters, communications networks, and data management systems that enable real time data collection and two way communications between the distribution utility and its customers. (See Exhibit R, Draft Business Plan, Section 11, Advanced Metering Infrastructure.)

Prior to securing title to PG&E's distribution facilities, SSJID proposes to coordinate with PG&E to obtain customer specific billing and metering data and to transfer system maps to assist in the transition and separation of the two systems.

### **4. SSJID's Water Assets**

The District has a long history of successful management and operation of its irrigation water service. SSJID was formed as a special district on May 24, 1909, to develop infrastructure to provide agriculture customers with irrigation water service at competitive rates. SSJID's service territory covers approximately 72,000 acres (112 square miles) and includes the incorporated cities of Escalon, Manteca and Ripon, as well as portions of the unincorporated areas of San Joaquin County. It shares senior water rights on the Stanislaus River with OID that provide a stable

supply of water for irrigation, hydroelectric generation and drinking water. These water rights form the basis of an agreement with the United States Department of the Interior's Bureau of Reclamation, by which SSJID and OID share the first 600,000 acre-feet of inflow to New Melones Reservoir. SSJID maintains a water delivery system that extends from Goodwin Dam, through a system of open canals, tunnels and pipelines to Woodward Reservoir. Water is diverted from Woodward Reservoir for irrigation through an extensive system of canals and pipelines to approximately 3,600 land parcels. Water is also diverted from Woodward Reservoir to SSJID's Nick C. DeGroot Water Treatment Plant for treatment and distribution to residences and businesses in the cities of Manteca, Lathrop and Tracy. SSJID has been providing drinking water to the three cities since 2005. SSJID expects to begin providing drinking water to Escalon in the future and has been working with the City of Ripon to determine the feasibility of extending water service to Ripon.

Raw water sales are, in some years, a major source of SSJID's annual revenues. In addition, irrigation water sales currently provide additional revenue of \$1,250,000, annually.

## **5. SSJID's Electric Generation Assets and Marketing**

SSJID currently co-owns rights to 135 megawatts ("MW") of electric generation capacity, of which 71 MW are its share. A key development in SSJID's history was the construction of the Tri-Dam Project, a hydroelectric project undertaken without state or federal financing. It is owned jointly with OID. Completed in 1957, the Tri-Dam Project is comprised of three dams – Donnells, Beardsley, and Tulloch – along with three power houses and a seven-mile tunnel carved through solid rock. The Tri-Dam Project generates an average of 460 million kilowatt-hours ("kWh") annually from an installed capacity of approximately 109 MW. SSJID is 50 percent owner of the Tri-Dam Project.



SSJID also holds a 50 percent interest in the Tri-Dam Power Authority, a joint powers authority that owns the rights to 16 MW of generating capacity at the Sand Bar Project. The energy from the Sand Bar Project is sold to PG&E under a contract that terminates in 2017.

SSJID has received an average of \$8.5 million each year since January 2005 from its share of the Tri-Dam and Tri-Dam Power Authority revenues. SSJID has utilized this revenue to finance capital improvement projects and increase its financial reserves. The District's total cash reserves were \$52 million as of January 31, 2016. This increase is due in large part, but not exclusively, to the Tri-Dam Project and Tri-Dam Power Authority revenue.

SSJID also owns two hydroelectric generation projects which have a capacity of 8 MW at the inlet and outlets to Woodward Reservoir. Energy from SSJID's two hydroelectric projects at Woodward Reservoir is sold to Turlock Irrigation District on a long-term contract.

SSJID's renewable electricity portfolio includes 1.378 MW of solar generation at its water treatment plant. SSJID has also made significant investment in energy efficiency initiatives.

SSJID also has experience with marketing its power. In 1954, the Tri-Dam Project entered into long-term (50-year), fixed-price power sales agreements with PG&E for the entire output from the Tri-Dam Project facilities. These agreements expired on December 31, 2004. A new five-year market-based agreement was entered into with PG&E which provided significantly more revenue to the Tri-Dam Project owners. The new PG&E agreement was terminated effective December 31, 2008, and new agreements were signed with Shell Energy North America, to take advantage of additional opportunities to market energy, capacity and ancillary services on the wholesale energy markets. Subsequently, the Shell Energy

agreement was terminated and a 10-year agreement with the City of Santa Clara took effect on January 1, 2014.

### **III. OVERVIEW OF PUBLIC POWER INDUSTRY**

#### **a. Benefits of Public Power**

The benefits of public power have been reported on extensively by its trade association, the American Public Power Association ("APPA"). Among these benefits are:

- On average, public power utilities have residential rates that are approximately ten to fifteen percent lower than those of investor-owned utilities.
- On average, service reliability is also well above the national average, as measured by various service interruption and restoration indices.
- The overwhelming majority of public power utilities have independent rate authority, meaning they do not have to obtain state regulatory approval to alter the level or rate design of their retail rate tariffs.
- Utility programs are often used to support broader public policy goals established for the community, such as economic development and support for new businesses.
- Public power utilities are largely exempt from regulation by the Federal Energy Regulatory Commission, although they are subject to the rules and regulations established by FERC for open-access transmission service, regional transmission organization markets, and electric reliability standards.
- Public power resource portfolios are diverse and reflect the supply alternatives available in each region of the nation.

- On balance, public power utilities are slightly more “green” than other industry sectors, because of long-standing access to hydroelectric resources, and in recent years, increased use of natural gas.
- Most public power utilities, particularly smaller ones, do not own generating capacity, as SSJID does. Approximately two-thirds of end-use public power capacity is supplied by municipal joint action agencies or through purchases from other utilities and generating companies.

**b. Challenges of Public Power**

The challenges to public power - indeed, the entire electric industry - are typically financial, managerial, operational and the ability to comply with legislative and regulatory requirements. There are also risks associated with the on-going transformation of the electric industry.

Financial projections are typically based on assumptions about power supply, operating costs and investments to the system, and revenues, both existing and over time. Such assumptions can be derailed by economic downturns, unanticipated increases in supply and operational costs, as well as changes in the legislative and regulatory environment. Customer sensitivity to increasing rates can make it difficult to address increasing revenue requirements. While these changes can affect public power, they can also affect investor-owned utilities as demonstrated by the impacts of California deregulation in the early 1990's.

Managing such issues requires strong financial policies, controls and establishment of cash reserves. It is also essential that appropriate risk management policies and processes are put in place and that strong oversight and financial discipline is exercised by the governing body. Experienced management and operations personnel are essential to successfully working through the various challenges which are inevitable in any utility operation.

Many public power utilities have yet to modernize their information technology, operations technology, and customer interface/metering infrastructures. While this is a challenge, it is also an opportunity.

Small public power utilities have a much larger set of hurdles to fully modernize their infrastructure and business processes. However, they may be able to avoid the mistakes of early adopters and employ technology applications that are optimal for their communities, as well as proven solutions for a smart grid future.

The electric industry is seeing a wave of distributed energy resources which are fundamentally different than traditional generation, such as coal, natural gas and hydro. Solar is being deployed in many parts of California, driven by commercial competition, renewable portfolio standards, climate change mitigation strategies, and community interest. Public power utilities must manage this transition while assuring benefits to all customer segments in the communities they serve.

Other technologies, particularly energy storage, are in the early stages of commercial deployment, driven in large part by regulatory requirements. And there is a growing suite of conventional and advanced customer-side technologies, including smart thermostats and grid-connected appliances, being marketed to customers by third parties.

Public power utilities will need to build on their fundamental strengths and respond to emerging customer preferences, business and technological opportunities, and public policy goals. Public power utilities must continue efforts — through pilot programs where necessary — to integrate and manage solar and other distributed energy resources into utility operations, and implement technologies and business practices that allow customers to avail themselves of offerings by third-party vendors if they so choose.

Many public power utility customers cannot participate directly in residential rooftop solar. Their incomes and bills are too low to make it worthwhile or they live in unsuitable housing. But customers can participate as subscribers in community solar programs or through utility scale solar. This model is particularly well suited to public power utilities.

Community education is critical. New programs and rate impacts need well-articulated goals and reasons which are embraced by utility customers. The public airing and debate of utility goals and investments, and full discussion of the impact on rates is a defining feature of the public power business model.

### **c. Public Power Industry**

#### **1. History**

Public power utilities are time-tested and have thrived for more than a century. Close to 2,000 cities and towns in the United States receive their electricity from a community-owned and operated utility.<sup>33</sup> In California, 54 public power entities provide electric service to almost 3 million citizens.<sup>34</sup> Regionally, Sacramento, Roseville, Modesto, and Turlock residents are served by public power.

Public power providers in California are of various sizes:<sup>35</sup>

|                                       | <i>Number of Customers</i> |
|---------------------------------------|----------------------------|
| Sacramento Municipal Utility District | 607,727                    |
| Modesto Irrigation District           | 115,692                    |
| Anaheim Public Utilities              | 115, 577                   |
| Turlock Irrigation District           | 100,277                    |
| Roseville Electric                    | 55,408                     |

---

<sup>33</sup> APPA 2015-2016 Directory and Statistical Report at p. 5.

<sup>34</sup> Energy Information Administration Form EIA-861, 2013 data.

<sup>35</sup> APPA 2015-2016 Directory and Statistical Report (based on customers served in 2013) at p. 38.

|                         |        |
|-------------------------|--------|
| Silicon Valley Power    | 52,478 |
| City of Redding         | 43,511 |
| Alameda Power & Telecom | 34,505 |

## 2. Culture

Public power is community power. Each public power utility is a reflection of the values and characteristics of the community(ies) served. And such utilities can take various forms. Some public power utilities are separate public utility districts; others are part of the town, city, or county governments. There are even state-owned utilities such as Santee Cooper in South Carolina. But all serve a common purpose: safe, reliable, electricity at reasonable, low costs.

The distinguishing features of public power utilities is the focus on the customer, and local decision-making. The governing bodies are locally-elected officials (e.g., mayors, councils, boards) who are accessible and accountable to their customer-owners, not to a separate group of shareholders. The local bodies are the regulatory boards of public power utilities, not the California Public Utility Commission. These local officials set rates in public meetings, and they determine how to comply with state-required energy goals, such as the renewable resource and energy resource mandates, with a focus on keeping electricity costs as low as possible.

The customer focus of public power results in multiple benefits. Tailored services and hours make it easier for customers to do business with the utility. Surveys, focus groups and other methods provide customer feedback. Caring, flexible, and responsive front-line people strengthen the bonds between the utility and its customer-owners. And public power utilities are valuable partners with their local governments in economic development, bringing focused attention, service and lower rates to attract business to the surrounding community.

**d. Effect of Cost Controls in Propositions 26 and 218 on Cost of Service as Compared to Investor-Owned Utilities**

The application of Propositions 26 and 218 will have a cost control effect over SSJID's provision of retail electric service. SSJID is subject to Propositions 26 and 218. Article XIIC was added to the California Constitution by Proposition 218 in 1996, and provides that all taxes imposed by a local government must be approved by a vote of the local electorate. In 2010, California voters adopted Proposition 26, which amended article XIIC to provide a more detailed definition of what types of charges constitute a "tax" requiring voter approval. Now, as used in article XIIC, the term "tax" means "any levy, charge, or exaction of any kind imposed by a local government," unless that "levy, charge, or exaction" fits into one of seven enumerated exceptions.

As relevant to SSJID's retail electric plan, "[a] charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product", is not a tax and need not be approved by the voters.

In order to avoid running afoul of the constitutional prohibitions against taxes imposed without voter approval, SSJID - a local government entity - may only charge its retail electric customers the reasonable cost of providing that service. PG&E, as an investor-owned utility, is not bound by Propositions 26 and 218 and can (and does) charge its retail electric customers rates in excess of the cost of providing service in order to turn a profit.

By virtue of the application of Propositions 26 and 218, SSJID can and must provide retail electric service at-cost and without profit, which is in contrast to PG&E's rates which recovers profits for its investors. Clearly, the positive effect of the application of Propositions 26 and 218 to SSJID is that of cost control.

#### **IV. SUPPORT FOR FINDINGS AND DETERMINATIONS REQUIRED IN ADOPTING THE RESOLUTION OF NECESSITY**

##### **a. General Statement Of Public Use and Condemnation Authority**

The PG&E property -- that is the subject of the recommended RON -- is to be acquired for SSJID's Proposed Project, which involves owning, maintaining and operating the retail electric distribution system within its boundaries to provide retail electric service to the public.

The furnishing of electricity to the public is a recognized public use. *Siemons v. Southern California Edison Co.* (1967) 252 Cal.App.3d 1022, 1026.

California Code of Civil Procedure section 1240.010. *et seq.* gives entities authorized by statute the right to use eminent domain to acquire property for public use.

SSJID's general eminent domain authority is found in Water Code section 22456: "The District may exercise the right of eminent domain to take any property necessary to carry out its purpose."

Additionally SSJID is specifically authorized to acquire property for the distribution and sale of electric power under Water Code section 22115:

"Any district heretofore or hereafter formed may purchase or lease electric power from any agency or entity, public or private, and may provide for the acquisition, operation, leasing, and control of plants for the generation, transmission, distribution, sale, and lease of electric power, including sale to municipalities, public utility districts, or persons."



**b. Public Interest And Necessity**

Code of Civil Procedure sections 1245.230 and 1240.030 require that the SSJID Board find and declare that the public interest and necessity require the Proposed Project. As explained in the Legislative Committee Comments to section 1240.030, "public interest and necessity include all aspects of the public good including but not limited to social, economic, environmental and aesthetic considerations." The public interest and necessity require SSJID's proposed retail electric project. The public good and benefits from the Proposed Project (more fully discussed above in Section II.b) include the following:

- Local control and accountability to customers through a locally elected Board of Directors;
- Direct accessibility by customers to SSJID's directors and management;
- Increased public participation and control over electric distribution services through attendance at regular Board meetings and voting;
- Transparency of SSJID's operation and practices through compliance with the Brown Act and the Public Records Act;
- Reduced electric rates, projected to be a 15% discount from PG&E's rates;
- Improving and stimulating the local economy through the reduced electrical rates, which is expected to provide an annual savings of approximately \$15.5 million in the first year of operation (see discussion at Section II.h *supra*);
- Ability to customize public benefits program spending to the specific needs of the customers within SSJID's boundaries;
- The locally-elected District Board is empowered with responsibility to ensure safety and reliability of the electric distribution system;

- The retail electric project has the support of the cities of Manteca, Ripon and Escalon all located within the District's service territory. (See Exhibits D, E, F, Resolutions from Cities of Manteca, Ripon and Escalon in support of SSJID's retail electric plan.)

**c. Planning And Location Of The Project**

The second element of public necessity required by Code of Civil Procedure section 1240.180 is that "the proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury." (Code of Civil Procedure sections 1245.230(c) and 1240.030.) Most often, this element involves a comparison of different geographical locations for a project. Given the District's declared public purpose of creating a public retail electric system, using PG&E's existing electric distribution facility located within the District's service area, there are no other locations for the Proposed Project.

Other potential non-location, alternatives to the Proposed Project are:

- Maintaining the *status quo* with PG&E continuing to provide retail electric service within SSJID's service territory;
- Construction of duplicative distribution facilities by SSJID rather than purchasing the existing distribution facilities of PG&E to provide retail service; and
- Community Choice Aggregation.

None of these options can achieve the greatest public good and the benefit of placing responsibility and accountability for electric resource policies, management, operation, rates and service to locally elected officials who are directly accountable

to voters in the communities served by SSJID and of reducing customers' electric rates by a projected 15 percent.<sup>36</sup>

The first alternative, maintaining the *status quo* with PG&E continuing to provide retail electric service, is the no project alternative.

The second alternative, would involve the construction of duplicative distribution facilities rather than purchasing PG&E's existing distribution facilities. The goal would have been to primarily serve new development as opposed to satisfying the District's goal of providing a benefit throughout all areas of the District. As stated in the Draft Subsequent EIR (November 2011), which is a part of the Final EIR (Exhibit H) at p. 6-32 in its rejection of this alternative: "Along with the additional environmental impacts, constructing a duplicate electric distribution system would substantially increase the overall cost for SSJID to a point where basic project objectives might not be achievable. Public agency policies generally discourage duplication of utility systems for these reasons".<sup>37</sup>

From an environmental perspective, duplication of PG&E's electric distribution facilities would result in a range of environmental impacts that could otherwise be avoided with the Proposed Project. Duplication would result in additional construction-related impacts across the entire SSJID territory, rather than the limited construction necessary for separation of the system under the Proposed Project. It

---

<sup>36</sup> As discussed in Section II.c. above, the options of a duplicate utility, electric bill credits and CCA, were discussed at the August 24, 2004 meeting of the District's Board of Directors and rejected by the Board's September 14, 2004 decision "to proceed with due diligence on the eminent domain option."

<sup>37</sup> See generally California Public Utility Code section 8101, which provides " Under certain conditions the sale and distribution of electric power and energy in the same geographical area both by an electrical utility and by an irrigation district, results in duplication of service, waste of materials, increase in costs, waste of manpower and economic loss, and is detrimental to the efficiency and best interests of such districts. It is the policy of this State to induce such utilities and irrigation districts to prevent or remove such economic waste and to adopt more efficient and economic methods of distribution of electric power and energy, and to that end encourage the definition of areas to be served or not to be served by each."

would also result in additional poles and duplicative substations beyond those necessary for the Proposed Project, resulting in permanent impacts to biological resources, geology, soils, hydrology, and water quality that would exceed those of the Proposed Project. Impacts to visual resources would be substantially more severe due to the duplicative poles and lines.

Under the Community Choice Aggregation ("CCA") alternative, SSJID would purchase and resell the electricity but PG&E would retain ownership of the distribution facilities and continue to provide distribution service.

The District's has determined, based on its evaluation of the CCA alternative, that it is neither legally nor financially feasible and that it does not achieve the Project's objectives of providing significant public benefits to the local community.

It is SSJID's legal position that several of the limitations and requirements contained in Public Utilities Code sections 331.1, 366.2(b) and 366.2(c)(1) preclude SSJID from becoming a CCA. Section 331.1 limits eligibility to become a CCA to entities that are "not within the jurisdiction of a local publicly owned electric utility." SSJID has construed the critical term "jurisdiction" as the service territory or geographic area the local publicly owned electric utility is authorized to serve. As the area SSJID is authorized to serve overlaps an area that the Modesto Irrigation District, a local publicly owned electric utility, is also authorized to serve, it is SSJID's position that the first sentence of section 331.1 bars it from obtaining CCA status.

SSJID is also of the legal opinion that it would not be able to lawfully provide CCA services due to the requirements and conflicting restraints imposed by sections 366.2(b) and 366.2(c)(1). While section 366.2(b) obligates a CCA to "offer the opportunity to purchase electricity to all residential customers within its jurisdiction," section 366.2(c)(1) bars the CCA from aggregating electrical load "served by a local publicly owned electric utility." SSJID has construed section 366.2(c) to bar SSJID from serving any electric loads in San Joaquin County that are served by MID and

that this inability would thus disqualify SSJID from satisfying the section 366.2(b) requirement to offer all residential customers “within its jurisdiction” the opportunity to “purchase electricity.”

Furthermore entities that are qualified to become community choice aggregators and provide electric service through CCA, but are neither cities nor counties, like SSJID, may do so under California Public Utilities Code section 331.1(c) upon the request of a city or county or group of cities or counties. At this juncture, none of the cities proposed to be served by SSJID, nor San Joaquin County, have requested SSJID to become a community choice aggregator.

The formation of a SSJID CCA would not achieve some of SSJID's primary objectives of the Proposed Project:

- **SSJID could not achieve its targeted 15 percent reduction in rates by becoming a CCA.** The Proposed Project would achieve the targeted 15 percent rate reduction through anticipated savings in both the generation and non-generation costs necessary to first procure and then deliver energy to its customers. However, the CCA structure would preclude SSJID from any ability to reduce non-generation costs. Thus, SSJID's potential savings would be restricted to its ability to reduce generation costs, which represent the minority proportion of the aggregate costs to serve the customers. MRW performed an economic analysis in 2012 to assess whether the CCA alternative could achieve the targeted 15% reduction in rates. MRW determined it could not. MRW's analysis concluded that SSJID could not maintain electric service through a CCA on a sustained long-term basis without substantially increasing rates. Also, the CCA structure would enable PG&E to retain its rights to recover the costs of the distribution and transmission facilities used to deliver energy through rates. Importantly, the rates PG&E would charge for the use of these facilities would continue to be

- set by the CPUC. The CCA structure would thus continue to impose on electric consumers within SSJID's service area the very real cost and service risks and uncertainties associated with PG&E operations and CPUC regulation.
- **The CCA alternative does not empower local officials with the responsibility to ensure safety and industry-accepted levels of reliability.** As the recent events at San Bruno and Aliso Canyon have unfortunately demonstrated, the safety and reliability performance by PG&E and the other large California utilities subject to jurisdiction by the CPUC have fallen short of the requisite levels for safe and reliable service. The ongoing saga of regulatory, civil, and even criminal proceedings alleging PG&E's failure to comply with state and federal operating and record retention requirements, and correspondingly to appropriately test and otherwise maintain critical facilities, raises serious questions about PG&E's commitment to provide the minimum level of service and the highest and safest level of service to electric customers. Coordinating the maintenance of the requisite levels of safety and reliability with the imperative need to control costs and minimize rates creates an inherent conflict of interest within PG&E management. In contrast, SSJID's Proposed Project removes such conflict of interest. The SSJID Board will have no responsibilities to its constituency that are in conflict and competition with any fiduciary obligations to investors. SSJID's only obligation is to provide its customers the highest level of safety and reliability and at a cost-effective price.
  - **A CCA structure would not transfer responsibility and accountability for electric service, rates and policies to locally-elected public officials.** As discussed above, the Proposed Project would enable SSJID's customers, through their votes, to direct SSJID on all matters relating to power procurement; ownership, operation, maintenance, and safety of the electric distribution system; marketing; metering; billing; customer relations; labor and

employment relations; environmental stewardship; budgeting; cost control; and customer rates. With a single-function CCA, the only responsibility and authority that would be transferred to SSJID's locally-elected Board would pertain to power procurement. PG&E would retain ownership and operation of the distribution system and all related responsibilities. In addition, SSJID customers would remain exposed to changes from the CPUC and/or PG&E with respect to allocation of system costs, the level of PG&E service fees, exit fees, and the entire range of incremental costs that the CPUC can impose directly on a CCA or indirectly through PG&E. As a result, the CCA structure does not offer a feasible alternative to meet the objective of the SSJID's Proposed Project to transfer responsibility and accountability for electric policies and practices from PG&E to locally-elected public officials directly accountable through the votes of SSJID's customers.

- **CCA does not allow SSJID to customize and prioritize public benefits programs and associated spending to the needs of the residents in the SSJID service area.** PG&E currently collects approximately \$1 billion annually from customers in order to finance its Public Purpose Programs, which include California Alternate Rates for Energy, energy efficiency programs, and public-interest research and development. While these programs provide PG&E's customers with necessary and significant benefits, particularly in economically-depressed areas such the communities which SSJID seek to provide service in San Joaquin County, PG&E's programs also impose real costs on the customers of the utility and it is imperative that the utility establish appropriate priorities to select the programs and then to implement the programs in the most efficient, equitable, and cost-effective manner. Under the CCA alternative, PG&E (with regulatory oversight by the CPUC) would continue to have the rights and responsibilities to identify most Public Purpose Programs, establish priorities for implementation based on the needs of its entire Northern California service territory, and implement them

with employees and consultants not necessarily based in, nor familiar with the unique needs of, the SSJID communities. In contrast, under SSJID's Proposed Project, its Board, elected by and directly accountable to residents within the local communities, would determine the funding level for public programs, select the public programs that best address and are most responsive to the specific needs of the customers within the San Joaquin communities, and implement the programs with locally-based personnel.

In addition to the obstacles and disadvantages of the CCA alternative discussed above, it should be noted that, in December 2014, LAFCo concluded that "community choice aggregation is not a feasible alternative to [the SSJID plan proposed in] the Application" to provide retail electric service. (See Exhibit N, LAFCo Finding No. 5.F.)

On the issue of least private injury, the CPUC unanimously approved a resolution (CPUC Resolution E-4301) finding that:

"SSJID's proposal to provide retail electrical service to existing PG&E customers could raise rates for PG&E's remaining customers; the magnitude of the estimated increase, however, is small relative to PG&E's ability to provide adequate service at reasonable rates within the remainder of its service territory."<sup>38</sup>

**d. Necessity For Acquiring The Property Interests**

The third element of public necessity which must be established for the RON is whether the property sought to be acquired is necessary for the Proposed Project. Code of Civil Procedure §§ 1245.230(c), 1240.030. The accompanying Legislative

---

<sup>38</sup> The approximate 40,000 electric customers in SSJID's service area represents only .0074% of PG&E's stated 5.4 million electric customers accounts in the 70,000 square mile service area in Northern and Central California. PG&E Company Profile, Fast Facts - [www.pge.com/en/about/company/profile/index.page](http://www.pge.com/en/about/company/profile/index.page) (June 20, 2016)



Committee Comments state that evidence on this aspect of necessity is limited to evidence showing whether the particular property will be suitable and desirable for the construction and use of the proposed public project. PG&E's property consisting of the electrical distribution system is necessary for SSJID's Proposed Project, which is to replace PG&E as the provider of retail electric distribution service within the District's boundaries and to use PG&E's existing distribution system to provide the service. The District is only acquiring PG&E's property that is necessary for it to become the provider of retail electric service. The District is not acquiring any of PG&E's facilities used in the generation and transmission of electricity and for that reason its proposed acquisition of the Manteca and Ripon Substations are only partial acquisitions, limited to the distribution facilities.

**e. More Necessary Public Use**

In addition to establishing the three public use and necessity requirements, the District Board also must make a finding that its Proposed Project/use is a more necessary public use, given the property sought to be acquired is already appropriated to a public use by PG&E in its provision of retail electric service to the public.

Code of Civil Procedure section 1240.650 provides that a use by a public entity, like the District, is more necessary than a use by any person other than a public entity. SSJID is a public entity pursuant to Code of Civil Procedure section 1235.190. However, this is a rebuttable presumption for electric, gas, or water public utility property, such as the property owned by PG&E pursuant to subdivision (c) of Code of Civil Procedure section 1240.650.

SSJID's project is a more necessary public use than PG&E's existing use because of the significant benefits that SSJID's ownership and operation of the distribution system will provide to the customers and community within the District's boundaries. These are public benefits that PG&E cannot provide to the San Joaquin community

as an investor-owned utility with obligations to its shareholders and subject to CPUC regulation.

As described above in Section IV.b, Public Interest and Necessity, these benefits which establish a more necessary public use are local control and accountability through the District's Board of Directors, a body of locally elected public officials. The District is a public agency, unlike PG&E which is a subsidiary of PG&E Corporation, owned by its shareholders, or investors, and managed as a private enterprise. The CPUC is responsible for setting most of the regulations that govern PG&E's business which take place at CPUC regulatory proceedings in San Francisco. As stated in the MSR, PG&E's "electric customers" "do not decide how service is provided or how rates are established. PG&E and its shareholders oversee its management and operations and the CPUC approves PG&E rates" (MSR Report at p. 188) (Exhibit K). SSJID's Project will enable its customers to participate in the decision making process for service and the setting of rates through participation at the local Board meetings.

Furthermore, SSJID customers have the opportunity to express their views through local elections. This enables SSJID customers to direct SSJID on all matters relating to power procurement, operation, maintenance, safety, metering, billing, customer relations, environmental stewardship, budgeting, cost control and, of course, customer rates.

In contrast to the District's accountability to the voters and customers of the local community, PG&E's senior officers are accountable foremost to the millions of PG&E shareholders and secondarily to the CPUC.

Related to the more necessary public use of local control and accountability is the benefit of the District's transparent and open business practices. The District, as a public agency, has more transparent management and operation practices than PG&E. The District is required to hold open meetings consistent with the Brown Act

and provide all information and full disclosure of documents consistent with the Public Records Act. These requirements, intended to foster transparency and disclosure in government proceedings, do not apply to private corporations like PG&E. See *supra* Section II.b.

The District is also subject to public bid requirements and the District's own purchasing policy, providing more opportunities for competitive contractor bidding on contracted services; PG&E is not.

SSJID's use is a more necessary public use because of the significant public benefit of providing to the ratepayers a projected discount of 15% from PG&E's rates. As found in Dr. Jeff Michael's economic benefits analysis, (discussed above in Section II.h) these customer savings on electricity rates will result in increased consumer spending in the region positively impacting local jobs, incomes, and business activity. Energy costs are an important consideration in business investment and location and SSJID's lower electricity rates may help attract a greater concentration of manufacturing enterprises.

As discussed above with regard to the disadvantages of the CCA alternative, another significant public benefit that SSJID's retail electric project can provide is SSJID's ability to tailor its Public Benefits program to the specific needs of its local community. The District can determine the funding level for public programs, select the public programs that best address and are most responsive to its customers and implement the programs with locally-based personnel. PG&E cannot offer this community benefit because it establishes priorities for implementation based on the needs of its entire Northern California service territory, and implements them with employees and consultants not necessarily based in, nor familiar with the unique needs of, the SSJID communities.

LAFCo Condition No. 1 requires that SSJID, "shall fund and maintain public benefits programs as required by Public Utilities Code section 385, or as otherwise required

by law, as a cost of providing retail electric service with four percent of gross revenues or such amounts as necessary to meet the needs of local customers and to offer public benefits funding equivalent to those maintained by PG&E.”

Based on SSJID's analysis, this LAFCo condition to provide four percent of its gross revenues for public benefits programs would be a greater percentage of revenues than that required to be provided by PG&E under the formula for calculating the rate in Public Utilities Code section 385 (a) which yields a public benefit charge of 2.85% of revenues from ratepayers.

**f. Government Code Offer**

The District made an offer to PG&E to purchase the property that is the subject of this resolution as required by Government Code section 7267.2.

On May 12, 2016, the District submitted a written offer to PG&E to acquire its retail electric distribution system located within SSJID's service territory, in an amount not less than the approved appraisal for the property, along with a summary of the basis of the offer, comprised of an Appraisal Summary Statement prepared by a professional appraiser, Nancy Heller Hughes, ASA, of NewGen Strategies, who has certifications as a utility appraiser and a utility depreciation professional. Ms. Hughes has over 30 years of experience in public utility appraisals and utility assessments. The offer amount was \$115,995,500, which the Board believes is just compensation. (See Exhibit P, Offer to PG&E and Appraisal Summary Statement (without attachments).)

As part of the appraisal process, along with retained utility engineers from Siemens, Ms. Hughes inspected PG&E's system facilities. She reviewed publicly available information on PG&E, including information from CPUC proceedings, and other public sources.

Ms. Hughes appraised the fair market value of PG&E's entire retail electric distribution system located within the District's service territory, which includes the distribution network facilities, infrastructure, real property, severance costs, impairment damages and other rights and interests necessary for the operation of the system.

On June 3, 2016, PG&E rejected SSJID's offer and stated the "Company's assets are not for sale."

SSJID has complied with its obligations under Government Code section 7267.2 to make an offer of just compensation to PG&E.

#### **g. CEQA Review And Compliance**

The necessary environmental review in compliance with CEQA for the Project was completed through LAFCo's certification of the Final Subsequent Environmental Impact Report (South San Joaquin Irrigation District Plan to Provide Retail Electric Service, Sphere Plan, MSR and Annexation) in November 2014, ("Final EIR") (Exhibit H). CEQA requires state and local agencies to identify the significant environmental impacts of their actions and, if feasible, to avoid or mitigate those impacts.<sup>39</sup> In 2010 and 2011, LAFCo prepared a "Draft Subsequent Environmental Impact Statement"<sup>40</sup> ("Draft EIR") as required by CEQA and circulated it for public comment from November 2011 until January 2012. The Draft EIR evaluated, among other plans, SSJID's proposal to expand its existing services to provide retail electric service by acquiring the electric distribution facilities currently owned,

---

<sup>39</sup> See generally Cal. Public Resources Code sections 21000, *et seq.*; CEQA Guidelines, Title 14 Cal. Code of Regulations, Chapter 3.

<sup>40</sup> The EIR was a "Subsequent" EIR because it evaluated environmental impacts associated with SSJID's proposed retail electric service project, which had already been the subject of extensive environmental review in connection with SSJID's previous application in 2006. Although the 2011 EIR evaluated certain LAFCo actions unrelated to the electric service plan for the first time, it was referred to as a Subsequent EIR to distinguish it from the EIR certified by San Joaquin County in June 2006.

operated and used by PG&E to provide retail electric service to end users within the SSJID territory. Following the close of the comment period, LAFCo decided to undertake a partial recirculation of the Draft EIR. The Partially Recirculated Draft EIR provided new information regarding a potentially feasible project alternative (*i.e.*, CCA), and was circulated for a public review period that ended in August 2012. In November 2014, LAFCo issued the Final EIR. The Final EIR included revisions to the Draft EIR and responses to comments on the EIR; it also incorporated revisions in light of comments received from PG&E. (Exhibit H, Final EIR, at pp. A1-A-2.)

Before a lead agency may approve a project, it must certify that the EIR adequately discloses the environmental effects of the proposed project, that the EIR has been completed in compliance with CEQA, and that the decision-making body of the lead agency has independently reviewed and considered the information contained in the EIR. LAFCo, the lead agency, certified that Final EIR at the conclusion of the two day hearing on December 11, 2014.<sup>41</sup>

## **V. CONCLUSION AND RECOMMENDATION**

Based on the foregoing, it recommended that the SSJID Board adopt a resolution of necessity authorizing SSJID's acquisition by eminent domain of PG&E's retail electric distribution system.

100113000

---

<sup>41</sup> In the pending *PG&E v. SJ LAFCo, et al.* case, PG&E has alleged that LAFCo violated CEQA in connection with its certification of the Final EIR for the retail electric project. The Superior Court has approved the parties' stipulated briefing schedule on this issue and the hearing is scheduled to take place on September 27, 2016. In spite of PG&E's legal challenge to the EIR, under California Public Resources Code section 21167.3(b) and 14 Cal. Code Regs. section 15231, an EIR is assumed to comply with CEQA even where there is a pending action challenging that EIR's compliance and certification. Also, case law indicates that projects founded on an EIR or negative declaration may go forward, even when challenges to their CEQA compliance are pending.