

Report and recommendations on alternatives to the rate changes proposed by the general manager – revised on August 28, 2023

by Mark Graham

August 28, 2023

Dear SMUD Board of Directors and staff,

This is my first revised rReport and recommendations on alternatives to the rate changes proposed by the general manager for the years 2024 and 2025. I sent you my original report and recommendations on alternatives to the rate changes proposed by the general manager on August 23.

The Public Utilities Code requires you to consider my report and recommendation on alternatives at the hearing held pursuant to Section 14403. There is no deadline for me to send it to you. It only has to be sent to you in writing. Section 14403.5.

Please provide a substantive and thorough response.

I will show the additions in a different color font. I will send you both a pdf format and a docx format of this report. If you want to view it all in black letters you can adjust the settings under edit, track changes using a word processing program.

The following documents are part of and are incorporated into this report and recommendation by this reference:

2022 Rate Costing Study

"2017 (sic) Residential Time-of-Use Rate (RT02) Design Study," dated November 30, 2016. (page 109 of 2017 CEO and GM Report). (It should have said 2018, per SMUD staff.)

2017 CEO and GM Report

AGENDA of the SACRAMENTO MUNICIPAL UTILITY DISTRICT BOARD OF DIRECTORS MEETING, April 20, 2023 – 5:30 p.m.

My email of Sunday, August 13th, 2023 at 12:22 PM

My email of Monday, August 14th, 2023 at 2:50 PM

My email correspondence with staff on August 2, 6, 11, 13, 14, 17 and other dates described

Report and recommendations by Mark Graham on alternatives to the rate changes proposed by the general manager

herein.

Transcript of the second public workshop, dated August 3, 2023

*CITIZENS FOR FAIR REU RATES et al., v. CITY OF REDDING et al.*, (2015), C071906, (Super. Ct. Nos. 171377, 172960), (reversed on other grounds).

Resolution 13-03-08 and attachment C thereto  
Recommendations:

(CAPISTRANO TAXPAYERS ASSOCIATION, INC., v. CITY OF SAN JUAN CAPISTRANO, G048969, COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION THREE, (Super. Ct. No. 30-2012-00594579), Order modifying opinion: no change in judgment, dated May 19, 2015.)

#1 Lower the rates to comply with Article XIII C of the California Constitution, VOTER APPROVAL FOR LOCAL TAX LEVIES. Specifically:

Eliminate the scalar (S), which was originally 9.2% of total marginal costs in the original Time of Day (TOD) rates set in 2017 and remains in the rates today, from the proposed rates. Do this by calculating the current percentage of total marginal cost (CPTMC) represented by the scalar, multiply the current rates by 100 – CPTMC, or if SMUD can justify a better way to calculate the current value of the scalar, use it and then apply the four proposed increases of 2.75%.

See my presentations at the 2019 and 2021 rate hearings and my emails to the Board at those times. The issue was essentially the same then as it is today.

See also my email to the Board of Directors dated August 14, 2023, which email is incorporated into this Report by this reference.

See also the following discussion. Feel free to ask me questions to clarify.

**Key points on the history of SMUD's Time of Day rates:**

#1 The original time of day rates included a 9.2% scalar, presented in the 2018 rate design study, referred to in Appendix I of the 2017 CEO and GM Report.

#2 Every year since then SMUD has raised rates across the board.

#3 SMUD has never backed the 9.2% scalar out of its rates.

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

#4 Therefore the 9.2% scalar remains a part of today's rates and the proposed rates for 2024 - 2025.

### **The current Time of Day rates are a special tax**

Key points:

#1 Definition of a tax

Definitions in Article XIII C:

Section 1

(e) As used in this article, "tax" means any levy, charge, or exaction of any kind imposed by a local government, except the following:

(1) A charge imposed for a specific benefit conferred or privilege granted 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 conferring the benefit or granting the privilege.

(2) 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.

(Note: There are 5 other exceptions to the definition of a tax but none even plausibly applies to SMUD rates and therefore they are not mentioned here.)

Section 2

(a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

Therefore any taxes charged by SMUD must be special taxes.

#2 The proposed rates are a "levy, charge, or exaction of any kind imposed by a local government."

#3 Exceptions (e)(1) and (e)(2) do not apply to the proposed rates.

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, [revised on August 28, 2023](#)

The reason is, as I have explained in my email of Sunday, August 13th, 2023 at 12:22 PM, SMUD's argument about exceptions (e)(1) and (e)(2) is incorrect. Those exceptions do not apply to the proposed rates (or the current rates). Therefore the rates are taxes. They must be special taxes because SMUD is a special service district and does not have the ability to collect general taxes.

**What SMUD must do to get approval for a special tax:**

If the proposed rates are special taxes then they violate Article XIII C of the California Constitution and must not be passed. SMUD's only option, per [Article XIII C, sec. 2 \(d\)](#), is to let the voters vote and see if 2/3 of them approve the new rates.

"(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved."

Is SMUD imposing, extending or increasing a special tax?

Definitions in the Government Code, section 53750, of:

(e) "Extended," when applied to an existing tax or fee or charge, means a decision by an agency to extend the stated effective period for the tax or fee or charge, including, but not limited to, amendment or removal of a sunset provision or expiration date.

(h) (1) "Increased," when applied to a tax, assessment, or property-related fee or charge, means a decision by an agency that does either of the following:

- (A) Increases any applicable rate used to calculate the tax, assessment, fee, or charge.
- (B) Revises the methodology by which the tax, assessment, fee, or charge is calculated, if that revision results in an increased amount being levied on any person or parcel.

I have shown you in my email of Monday, August 14th, 2023 at 2:50 PM that SMUD's rates really are imposed on rate payers. *CITIZENS FOR FAIR REU RATES et al., v. CITY OF REDDING et al.*, (2015), C071906, (Super. Ct. Nos. 171377, 172960), (reversed on other grounds), page 13

[I also sent this email to Ms. Jenna Lesch at SMUD on Sunday, August 13th, 2023 at 12:22 PM. Ms. Lesch confirmed that she had forwarded my message to the Directors on Tuesday, August 15th, 2023 at 6:05 PM with a cc to the Rates Team.](#)

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, [revised on August 28, 2023](#)

For your convenience here is the body of said email.

From

Mark<Mark@freewayblogging.com>

Sent

Aug 14, 2023

Monday, August 14th, 2023 at 2:50 PM

To

brandondrose@hotmail.com

nancy.bui@smud.org

Gregg Fishman<gbfishman@gmail.com>

Rosanna J. Herber<Rosanna.Herber@smud.org>

rob@kerth.us

davetamayo2@gmail.com

Heidi.Sanborn@smud.org

Subject: Message for the Board of Directors on the applicability of Article XIII C, August 13.

Monday, August 14th, 2023 at 2:50 PM

August 14, 2023

Dear SMUD Directors,

SMUD's proposed rates for 2024 and 2025 in the current Chief Executive Officer and General Manager's Report are proceeding on the assumption that you are not bound by Article XIII C of the California Constitution on local government taxes (from Proposition 26). But you may not be aware of a California Court of Appeals decision which invalidates SMUD's argument. SMUD staff has failed to address any legal questions or comments before which is why I am presenting this to you, the Board of Directors. Your work and the new proposed rates necessarily involve legal questions. They are policy issues and they involve legal questions, so dodging them is not an option.

Please respond and address this well in advance of the August 30 Board of Directors meeting and rate hearing. It is a key question. I am asking for a written response from you now and a verbal

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

response during the August 30 meeting. Unfortunately SMUD has a habit of glossing over arguments and questions without really responding to them or answering them. You know that the format of the rate hearing does not permit me to ask a follow up question or reiterate an argument which SMUD effectively dodged, so I am asking now for a thorough written response.

**Summary:** SMUD's current rates are taxes as defined in the California Constitution because they exceed by more than 10% your reasonable cost of providing electricity service. SMUD may not impose, extend or increase a tax without the approval of 2/3 of the electorate. SMUD has never sought or received such approval for the proposed rates for 2024 and 2025. Therefore the proposed rates are unconstitutional.

**Discussion:**

**California Constitution limitation on local taxes:**

Article XIII C, section 2(d) of the California Constitution says:

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote.

Tax is defined in Article XIII C: "(e) As used in this article, "tax" means any levy, charge, or exaction of any kind imposed by a local government, except the following: . . . ." There are 7 exceptions. The ones which SMUD cites are:

(1) A charge imposed for a specific benefit conferred or privilege granted 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 conferring the benefit or granting the privilege.

(2) 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.

**SMUD's argument about "imposed":**

SMUD claims the proposed rates are not taxes because they are not "imposed" on rate payers and its argument is:

Proposition 26 therefore applies only to charges that are “imposed” by local government. SMUD rates are not “imposed” on customers for purposes of Proposition 26, because that language requires some exercise of government force or authority, which is not involved when a public agency, such as SMUD, provides services to customers in a competitive market. SMUD customers pay only for the voluntary use of service, and they have meaningful alternatives to that service, such as self-generation and storage with solar, hydro, fuel cell, wind, geothermal power and batteries. (CEO and GM Report, page 76)

This is nonsense. Is it really practical for an individual living in SMUD's service territory to set up and operate his own hydro, fuel cell, wind, geothermal power and batteries? Solar is becoming more popular but it always relies on SMUD, not only to sell back the excess power during bright, sunny days but also to provide power when the sun doesn't shine, such as at night, or doesn't shine brightly, such as on cloudy days. Solar is a good partial solution; a source of power during limited times when the conditions are right for steady, bright sun. This is not a meaningful alternative to buying electricity from SMUD. As far as I know every resident with solar power is also a SMUD customer. As you know PG&E and other investor owned utilities do not operate in SMUD's service area so this is not "a competitive market."

The reasoning here is supported by case law. There was a case called *CITIZENS FOR FAIR REU RATES et al., v. CITY OF REDDING et al.* REU stands for Redding Electric Utility.

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

The Court of Appeals for the Third Appellate District addressed this argument.

“Redding argues Proposition 26 does not apply because the Utility’s rates (including the PILOT component) are not “imposed.” Redding reasons that “[e]ven if the PILOT were funded by [electric] rates, no force or authority is involved here -- those who wish to buy energy from [the Utility] pay the PILOT (and other costs argued to be funded by [the Utility’s] service rates) only to the extent they use its service. Those who obtain energy in other ways do not. [There are] other alternatives to electric utility service (such as solar, water, wind and geothermal power) . . . .” The trial court rejected the argument, pointing out that while “legally [the Utility] has no monopoly as an electric utility, the reality is that for many people there are no economically viable alternatives. The Court used the example of a tenant who is renting a house or apartment that is served by [the Utility]. While theoretically possible that a tenant who does not wish to use [the Utility] could install an alternate power source, that is simply not a realistic option.” We agree. A tax does not lose its revenue-generating character because there is a theoretical but unrealistic way to escape from the tax’s purview. The PILOT was imposed under Redding’s authority to generate revenue for its general fund.”

*CITIZENS FOR FAIR REU RATES et al., v. CITY OF REDDING et al., (2015), C071906, (Super. Ct. Nos. 171377, 172960), (reversed on other grounds), page 13*

The same logic applies here. A resident, especially a tenant, in a house or apartment that is served by SMUD cannot realistically install and operate hydro, fuel cell, wind, geothermal power and batteries. As for solar if the owner of the house or apartment doesn't want to invest in and doesn't have solar then solar is not an option for the tenant either. You can't do your own hydropower unless you live right on the river and your landlord approves it and the City will permit you to build a dam (and other state and federal agencies) and you have millions of dollars to do it and plan to rent there for the next 50 years or so. It's not a realistic option.



Therefore SMUD's rates really are imposed. Therefore SMUD's rates really are taxes as defined in Article XIII C: "(e) As used in this article, "tax" means any levy, charge, or exaction of any kind imposed by a local government, except the following: . . . ."

Therefore SMUD may not extend or increase its rates either without a 2/3 vote of the electorate, according to section 2(d) above.

**SMUD's argument about exceptions (e)(1) and (e)(2):**

SMUD also claims Article XIII C does not apply to its rates because, "charges for benefits conferred upon the payor, or for specific government services provided directly to the payor, are excepted under Cal. Const., art. XIII C, subdivisions (e)(1) and (e)(2), respectively, provided that the charge does not exceed the reasonable cost of providing that benefit or service."

As I showed the Board during the 2019 and 2021 rate actions, the original time of day (TOD) rates do exceed your reasonable cost of providing electricity service. This is proven by the document which originally calculated the amount of your marginal cost components and total marginal cost and then inflated the total marginal cost by the addition of a 9.2% "scalar" to get the final numbers for each time period in terms of dollars per kilowatt hour. The original rate resolution. SMUD's first TOD rates were set on June 15, 2017 in Resolution 17-06-09. The document was the 2017 and 2018 RT02 rate design study.

SMUD published a CEO and GM Report and Recommendation on Rates and Services (the "2017 Report"). That Report contained, as Appendix I, a letter dated December 6, 2016 from NERA Economic Consulting addressed to SMUD's Resource Planning and Pricing Department (RP&P). The subject of the letter was NERA's independent review of SMUD's 2016 Marginal Cost of Service (MCS) Study and its proposed residential Time of Use (TOU) rates for the period 2017 – 2019. That letter was pages 109 – 112 of the Report.

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

NERA wrote that it had reviewed SMUD documents including the 2018 Residential Time-of-Use Rate (RT02) Design Study (“Rate (RT02) Design Study”).

That study quantified the marginal cost components of SMUD’s then proposed residential Time of Day (TOD) rates. Marginal cost components were: Generation, Capacity, RPS, Transmission, Subtransmission, Distribution, Distribution Facilities, Meter and Services. (page 3) The problem is that after carefully accounting for each Marginal Cost Component SMUD unconstitutionally added a “scalar” of 9.2% to set rate revenues equal to budget revenues.

In other words SMUD had a target for how much money it wanted to take in via residential TOD rates and to reach that target it added 9.2% to its marginal cost.

SMUD’s explanation of this 9.2% “scalar” is:

“The proposed time-of-use energy rate is completed by setting proposed rate revenues equal to rate revenues for the budget year. The reconciliation of marginal costs to rate revenues is accomplished through increasing final marginal cost energy charges by a scalar of 9.2%.”

This is in the RT02 Rate Design Study, page 14, in between Table L and Table M.

**Table L: Time-of-Use Energy Marginal Cost**

	Time-of-Use	Energy, Ancillary Service & RPS Cost	Generation Capacity	Trans & Dist	Residual Distribution Facilities	Public Good	Total Energy Marginal Cost
<b>Rates Time Of Use</b>	Summer Peak	\$0.0713	\$0.0680	\$0.0689	\$0.0371	\$0.0096	\$0.2548
	Summer Mid-Peak	\$0.0580	\$0.0253	\$0.0248	\$0.0270	\$0.0096	\$0.1447
	Summer Off-Peak	\$0.0484	\$0.0126	\$0.0102	\$0.0239	\$0.0096	\$0.1048
	Winter Peak	\$0.0612	\$0.0096	\$0.0000	\$0.0398	\$0.0096	\$0.1202
	Winter Off-Peak	\$0.0491	\$0.0013	\$0.0000	\$0.0271	\$0.0096	\$0.0872

The proposed time-of-use energy rate is completed by setting proposed rate revenues equal to rate revenues for the budget year. The reconciliation of marginal costs to rate revenues is accomplished through increasing final marginal cost energy charges by a scalar of 9.2%.

**Table M: Proposed Energy Charge**

	Time-of-Use	Total Energy Marginal Cost	Scalar 9.2%	2017 Energy Charges
<b>Rates Time Of Use</b>	Summer Peak	\$0.2548	\$0.0235	\$0.2783
	Summer Mid-Peak	\$0.1447	\$0.0133	\$0.1580
	Summer Off-Peak	\$0.1048	\$0.0097	\$0.1145
	Winter Peak	\$0.1202	\$0.0111	\$0.1313
	Winter Off-Peak	\$0.0872	\$0.0080	\$0.0952

Ref  
mar

I have embedded an image of Table L and Table M directly above, but if you do not see it please find it on page 14 of the 2017 and 2018 Rate Design Study. Again, this document is not contained in the 2017 CEO and GM Report but Appendix I, the letter from NERA Economic Consulting on pages 109 - 112, refers to the 2017 Rate Design Study.

SMUD Rates Team has told me by email that SMUD has not removed or backed the 9.2% scalar out of its current or proposed rates. Therefore your proposal to increase rates by 2.75% on January 1 and May 1 of 2024 and 2025 is a proposal, *inter alia*, to increase the scalar by the same amounts and to continue it.

Therefore your current rates are taxes as defined in Article XIII C. All of your residential time of day rates have been taxes.

My email earlier today showed that SMUD has failed to cost justify its proposed rates. Please refer to it, as said email is incorporated into this email by this reference. The 2022 Rate Costing Study, which purportedly provides cost justification, does not show any numbers which are associated with or support the proposed rate increases of 2.75%.

The scalar is not associated with any specific marginal cost component. Therefore it is not part of SMUD's reasonable cost of providing electricity service. Therefore exception (e)(2) in Section 1 of Article XIII C does not apply and the limitation in section 2 (d) does apply. Therefore your proposed rates are taxes. You may not impose, extend or increase a special tax without a 2/3 vote of the electorate.

"A tax is extended when an agency lengthens the time period during which it applies. Gov. Code, § 53750, subd. (e). A tax is increased when an agency revises its methodology for

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

calculating a tax and the revision results in increased taxes being levied on any person or parcel.  
§ 53750, subd. (h)(1)."

Webb v. City of Riverside, 23 Cal. App. 5th 244, 258.

**Conclusion:**

Your proposed rates, based on this analysis, violate Article XIII C of the California Constitution  
and are subject to cancellation by a court of competent jurisdiction.

Please give a substantive response to this argument as soon as possible and long before the  
August 30 Board of Directors meeting and rate hearing. It is key to the validity of your proposed  
rates.

Sincerely,

Mark Graham

Obviously you are lengthening the time period during which the tax (the scalar) applies. You are lengthening the special tax to make it apply in the years 2024 and 2025.

In this case SMUD is increasing the applicable rate used to calculate the charge for electricity.

Therefore the proposed rates violate section 2 (d) of Article XIII C in three (3) different ways: SMUD is imposing, extending and increasing a special tax, which is the scalar of 9.2% which is still in the current and proposed rates. SMUD can only do this with the approval of 2/3 of the voters.

**Where did the original Scalar come from?**

The following is the history of the development of the original time of day rates and the associated "scalar", which originally was 9.2% of the value of the total marginal cost. This will be in paragraphs 1 through 18.

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

The point of this section is this: The original, current and proposed Time of Day (TOD) rates include a 9.2% (original amount) scalar. SMUD has not removed this scalar or backed it out from the rates. SMUD has increased rates every year, SMUD has not only left the scalar in all the subsequent rate resolutions but has also increased it, since rates have been increased across the board.

#1 SMUD's first residential Time of Day rates were set on June 15, 2017 in Resolution 17-06-09.

#1a In 2016 the District (SMUD) hired NERA Economic Consulting to provide an independent review of SMUD's 2016 Marginal Cost of Service (MCS) Study and its proposed residential Time of Use (TOU) rates for the period 2017 – 2019.

#2 Appendix I on pages 109-112 of the 2017 Chief Executive Officer and General Manager's Report and Recommendation on Rates and Services (hereinafter "2017 GM Report") is a letter from NERA Economic Consulting dated December 6, 2016 (the "NERA Marginal Cost Study Review Letter") to SMUD's Resource Planning and Pricing (RP&P) Department. The NERA Marginal Cost Study Review Letter begins by saying:

"Dear RP&P Staff,

NERA Economic Consulting (NERA) was engaged by the Sacramento Municipal Utility District (SMUD) to provide an independent review of SMUD's 2016 Marginal Cost of Service (MCS) Study and its proposed residential Time of Use (TOU) rates for the period 2017 – 2019. NERA was primarily responsible for assessing SMUD's marginal cost methods and whether the results of the MCS study were appropriately considered in the determination of cost allocation by rate class as well as in the proposed rate design.

Documents Reviewed

In conducting our review, we reviewed SMUD's draft marginal cost model and marginal cost study report, SMUD's Capital Expansion Plans, and SMUD's draft report titled "2017 Residential Time-of-Use Rate (RT02) Design Study". Additionally, NERA requested clarification on any questions arising from the review of the documentation. Although a comprehensive review of the study was performed, NERA did not audit the input data to the MCS model or the rate models employed by SMUD."

#3

The NERA letter refers to three other documents that SMUD produced and NERA reviewed in assessing the then proposed new TOD rates:

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, [revised on August 28, 2023](#)

- SMUD's draft marginal cost model and marginal cost study report dated November 17, 2016
- SMUD's capital expansion plans dated June and December, 2015; and
- SMUD's draft report titled “2017 (sic) Residential Time-of-Use Rate (RT02) Design Study”, dated November 30, 2016 which I will call the “Rate Design Study.”

#4

The Rate Design Study is referred to as "2017 (sic) Residential Time-of-Use Rate (RT02) Design Study," dated November 30, 2016. The “Rate Design Study” document is 16 pages long and labeled on page 1 as “2018 Residential Time-of-Use Rate (RT02) Design Study.”

#5

This above cited document was also the final version of the document; that there was no subsequent version that SMUD or NERA Economic Consulting produced and used in making its TOD rates.

#6

The actual intended date on the rate design study was 2018. In other words where it said 2017 in the title it was a typographical error.

#7

The Rate Design Study explained the concept behind the accounting term “marginal cost” and presented the marginal cost components; that is, the marginal cost for each component of SMUD’s proposed electric rates, and then the sum of all of those marginal cost components. The rate design study explained its use of marginal costs as follows:

“SMUD’s proposed rate structure as defined by the Chief Executive Officer & General Manager’s Report and Recommendation on Rates and Services is based on by (sic) SMUD’s Marginal Cost of service. Marginal costs are the additional costs SMUD incurs to provide electric service to a new customer, a new load or the savings expected from not serving that customer or load. These costs vary by the voltage at which electricity is delivered to the customer.”

(page 2)

#8

The entire rate design study is based on SMUD’s marginal cost of service. Starting from the above introduction and explanation, the study identifies each of the components of its marginal

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, [revised on August 28, 2023](#)

cost, then states the dollar amount of each one in units of dollars per kilowatt hours (\$/kWh), and then adds up all of the marginal cost components to arrive at the total marginal cost. The components of SMUD’s marginal cost are identified as Generation, Capacity, RPS, Transmission, Subtransmission, Distribution, Distribution Facilities, Meter and Services. (Table A, page 3). Table L identifies the components of SMUD’s marginal cost as Energy, Ancillary Service & RPS Cost, Generation Capacity, Trans(mission) & Dist(ribution), Residual Distribution Facilities, and Public Good. The sum of these is identified as “Total Energy Marginal Cost.”

#9

The final column in Table L is the “Total Energy Marginal Cost”. In Table M added what SMUD calls a “scalar”, which is equal to of 9.2% of said cost, to said cost. The sum is the “2017 Energy Charges”, shown in the final column of Table M of the RT02 Design Study. Both Tables are on page 14.

SMUD’s explanation of this scalar, right in between Tables L and M, is:

“The proposed time-of-use energy rate is completed by setting proposed rate revenues equal to rate revenues for the budget year. The reconciliation of marginal costs to rate revenues is accomplished through increasing final marginal cost energy charges by a scalar of 9.2%.”

#10 The following is a true and accurate copy of Tables L and M from the rate design study and the explanation in between them, page 14.

**Table L: Time-of-Use Energy Marginal Cost**

Time-of-Use		Energy, Ancillary Service & RPS Cost	Generation Capacity	Trans & Dist	Residual Distribution Facilities	Public Good	Total Energy Marginal Cost
Rates Time Of Use	Summer Peak	\$0.0713	\$0.0680	\$0.0689	\$0.0371	\$0.0096	\$0.2548
	Summer Mid-Peak	\$0.0580	\$0.0253	\$0.0248	\$0.0270	\$0.0096	\$0.1447
	Summer Off-Peak	\$0.0484	\$0.0126	\$0.0102	\$0.0239	\$0.0096	\$0.1048
	Winter Peak	\$0.0612	\$0.0096	\$0.0000	\$0.0398	\$0.0096	\$0.1202
	Winter Off-Peak	\$0.0491	\$0.0013	\$0.0000	\$0.0271	\$0.0096	\$0.0872

The proposed time-of-use energy rate is completed by setting proposed rate revenues equal to rate revenues for the budget year. The reconciliation of marginal costs to rate revenues is accomplished through increasing final marginal cost energy charges by a scalar of 9.2%.

**Table M: Proposed Energy Charge**

Time-of-Use		Total Energy Marginal Cost	Scalar 9.2%	2017 Energy Charges
Rates Time Of Use	Summer Peak	\$0.2548	\$0.0235	\$0.2783
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	Summer Off-Peak	\$0.1048	\$0.0097	\$0.1145
	Winter Peak	\$0.1202	\$0.0111	\$0.1313
	Winter Off-Peak	\$0.0872	\$0.0080	\$0.0952

Report a manager for 2017 and 2018, [Table M: Proposed Energy Charge](#), 2018

#11

Table L, as the title says, is SMUD's Time-of-Use Energy Marginal Cost.

Table L shows, in the first 5 columns of numbers, the dollar amount of the marginal cost component for marginal cost component for each of the time of use periods, which are Summer Peak, Summer Mid-Peak, Summer Off-Peak, Winter Peak and Winter Off-Peak.

For simplicity, the terms "Time-of-Day" and "Time-of-Use" are used interchangeably, as are the terms "Winter" and "Non-Summer."

(2019 CEO and GM Report, page 26)

The last column of numbers in Table L is the "Total Energy Marginal Cost".

The first column of numbers in Table M is also the "Total Energy Marginal Cost". Same numbers as in the last column in Table L.

The second column of numbers in Table M is the 9.2% scalar, equal to the "Total Energy Marginal Cost" for each of the five time periods.

The third column of numbers in Table M is "2017 Energy Charges", equal to the sum of the numbers in the first and second columns.

#12

The point of Table M is to add the scalar of 9.2% to the carefully calculated "Total Energy Marginal Cost" to obtain the "2017 Energy Charges". The proposed rates for 2018 and 2019, which the Board adopted and approved by resolution, were equal to these "2017 Energy Charges" plus another minor scalar.

#13

Unlike all of the components of SMUD's marginal cost, which are described in question #8, there is no specific cost which serves as the basis for the 9.2% scalar.

#13a

Appendix 1 of the 2017 CEO and General Manager's Report, which was NERA's Marginal Cost Study Review Letter, contained a Table 20 on page 112, reproduced below. An asterisk note to

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, [revised on August 28, 2023](#)



Table 20 says, "Scalar = 9.6%."

The total energy marginal cost by time periods is shown in as follows in Table 20:

Table 20 Total Marginal Cost by Time Period (\$/kWh)

Time Period	Energy, Ancillary Service & RPS Cost	Generation Capacity	Trans & Dist.	Residual Distribution Facilities	Public Good	Total Marginal Cost	Total MC Adjusted with Scalar*
Summer Peak	\$0.0713	\$0.0680	\$0.0689	\$0.0371	\$0.0096	\$0.2548	\$0.2793
Summer Mid-Peak	\$0.0580	\$0.0253	\$0.0248	\$0.0270	\$0.0096	\$0.1447	\$0.1586
Summer Off-Peak	\$0.0484	\$0.0126	\$0.0102	\$0.0239	\$0.0096	\$0.1048	\$0.1149
Non-Summer Peak	\$0.0612	\$0.0096	\$0.0000	\$0.0398	\$0.0096	\$0.1202	\$0.1318
Non-Summer Off-Peak	\$0.0491	\$0.0013	\$0.0000	\$0.0271	\$0.0096	\$0.0872	\$0.0955

\*Scalar = 9.6%

The marginal price signals in this study were developed using the historical 2013 average residential load shape, a year displaying historically typical weather characteristics for SMUD service area. As evidenced in SMUD's SPO study, introducing residential customers to Time-of-Day pricing as the standard rate for the forecast period is anticipated to result in the shifting of load from high price peak and mid-peak periods to lower price periods. Accordingly, the reconciliation of marginal costs to rate revenue is accomplished through increasing final marginal cost energy charges by a scalar of 9.6% to achieve a revenue neutral rate design for the 2019 budget period prior to adjusting rates with the proposed rate increase.

Staff proposes a residential rate increase of 1.5% in 2018. Table 19 shows the rate increase applied to residential charges.

*(end of report)*

#14

SMUD has not made any effort to eliminate, and has not eliminated, the 9.2% scalar from its rates for 2020 and 2021 or from the approved 2022 and 2023 rates. Therefore that scalar is still in the 2022 and 2023 rates. The scalar, like everything else that is in the current rates, was increased by the four rate increases approved by the SMUD Board for 2020 and 2021 (two in each year) and was also increased in 2022 and 2023 because SMUD did not back the scalar out of its rates before applying the increases approved for those years.

#15

The 9.2% scalar from the earlier (original and then as increased by the Board in subsequent rate actions) time of day rates is built into the proposed rate increases for 2024 and 2025.

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, [revised on August 28, 2023](#)

#16

The District has stated that the rate schedule shown in the Rate Design Study, which the SMUD Board of Directors approved in June, 2017 in the form of electricity rates and charges for the years 2018 and 2019, takes into consideration District policies and shows rates reflecting the cost of providing service to the various customer categories.

#17

Because of the way the system infrastructure fixed charge (SIFC) is calculated the 9.2% scalar is built into SMUD's current electric rates.

#18

Because of the way the residential fixed rate (RF01) is calculated the 9.2% scalar is built into SMUD's current fixed rate.

**SMUD cannot set rates based on predetermined budgets.**

Please address this during the rate hearing on August 30, 2023. If you believe there is some reason this case does not apply to your proposed rates, or if you have case law to the contrary, please present it. Remember your attorney's opinion is not legal authority. Neither is mine. But case law is.

It is clear from your CEO and GM Report and correspondence with the Rates Team that your proposed rates are based on your predetermined budgets for the next 2 years.

You may wonder whether there is any case law saying SMUD (or any local government) can set its rates based on predetermined budgets. There is case law saying you CANNOT do this.

“However, if a local government body chooses to impose tiered rates unilaterally without a vote, those tiers must be based on cost of service for the incremental level of usage, not pre-determined budgets.”

(CAPISTRANO TAXPAYERS ASSOCIATION, INC., v. CITY OF SAN JUAN CAPISTRANO, G048969, COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION THREE, (Super. Ct. No. 30-2012-00594579), Order modifying opinion: no change in judgment, dated May 19, 2015.)

The full quotation is on pages 2 and 3 of the opinion.

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

6. On page 27, delete the first sentence of the first complete paragraph, and substitute this paragraph in its stead: “The way Proposition 218 operates, water rates that exceed the cost of service operate as a tax, similar to the way a ‘carbon tax’ might be imposed on use of energy. But, we should emphasize: Just because such above-cost rates are a tax does not mean they cannot be imposed – they just have to be submitted to the relevant electorate and approved by the people in a vote. There is no reason, for example, why a water district or local government cannot, consistent with Proposition 218, seek the approval of the voters to impose a tax on water over a given level of usage – as we indicated earlier, that might be a good idea. However, if a local government body chooses to impose tiered rates unilaterally without a vote, those tiers must be based on cost of service for the incremental level of usage, not pre-determined budgets. (For the moment, of course, we need not decide whether such a proposed tax would constitute a general tax or special tax.)”

The Rates Team has told me you are basing your rates on predetermined budgets.

From

Rates<Rates@smud.org>

Thursday, August 17th, 2023 at 3:58 PM

To

Mark<Mark@freewayblogging.com>

Rates<Rates@smud.org>

CC

Pricing<Pricing@smud.org>

Hello Mr. Graham,

Please see responses to your questions in *red* below.

In relation to the connection between the 2022 Rate Costing Study and the 2.75% increases:

SMUD’s proposed rate increases for 2024 & 2025 are needed to ensure the forecasted revenue is sufficient to cover the projected costs for 2024 and 2025 which includes commodity costs, operations and maintenance, public good, capital, and debt service. Although we do have options as to the timing and amount of the rate increase, the overall revenue requirement remains the

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

same. We need an additional \$75M in 2024 and \$171M for 2025. In our April presentation to the Board of Directors, we gave them several options to choose from that resulted in the same revenue requirement with different rate increase amounts and different timing options. They selected the proposal that is represented in the General Managers report – 4 rate increases of 2.75% each in January and May of both 2024 and 2025. The General Managers report spells out the major cost drivers we’re seeing and the amounts, and that has also been shared in our public meetings.

Thank you.

SMUD Rates Team

SMUD Powering forward. Together.

6201 S Street, Mail Stop B256, Sacramento, CA 95817

P.O. Box 15830, Sacramento, CA 95852-0830

In subsequent correspondence the Rates Team informed me they were referring to the April 18, 2023 meeting of the Finance and Audit Committee and special Board of Directors meeting.

The Rates Team sent me the link to their presentation they were talking about. It is the Exhibit to Agenda item #1.

[https://www.smud.org/-/media/Documents/Corporate/About-Us/Board-Meetings-and-Agendas/2023/Apr/2023-04-18\\_Exhibit-to-Agenda-Item-1.ashx](https://www.smud.org/-/media/Documents/Corporate/About-Us/Board-Meetings-and-Agendas/2023/Apr/2023-04-18_Exhibit-to-Agenda-Item-1.ashx)

The set of options they were referring to is on slide 7, reproduced on the following page.

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

## Different timing & percentage options

	2024 - Revenue Requirement \$75M				2025 – Revenue Requirement \$170M			
	Increase 1		Increase 2		Increase 1		Increase 2	
	Month	Increase	Month	Increase	Month	Increase	Month	Increase
<b>Option 1</b>	Jan.	3.00%	Jun.	2.75%	Jan.	2.75%	Jun.	2.75%
<b>Option 2</b>	Jan.	2.75%	May	2.75%	Jan.	2.75%	May	2.75%
<b>Option 3</b>	Jan.	5.50%	N/A	N/A	Jan.	5.00%	N/A	N/A
<b>Option 4</b>	Mar.	4.75%	Oct.	4.00%	Mar.	1.75%	N/A	N/A
<b>Option 5</b>	Mar.	5.00%	Oct.	2.75%	Mar.	2.50%	Oct.	2.00%
<b>Option 6</b>	Jan.	4.50%	Oct.	2.00%	Jan.	3.75%	N/A	N/A

N/A – No rate increase in that time period.

April 18, 2023

7

Board Finance & Audit Committee and Special SMUD Board of Directors Meeting



According to the Rates Team email the option which the Board chose at the April 18 Finance and Audit Committee meeting and special meeting of the Board of Directors is option 2. It matches the proposal in the CEO and GM Report. (CEO and GM Report dated June 15, 2023, Volume 1, pages 10, 12, 19, 23 and elsewhere.)

### **SMUD cannot set its rates based on the standard industry practice of CPUC regulated utilities or utilities in other states**

The Rates Team has been evasive about the origins of the proposed rates. I sent them a set of questions on July 11, which they finally answered on July 26. Here are some of the questions and answers.

#### Questions:

#19 What is the factual and historical basis for SMUD including the 9.2% scalar from its original TOD rates in the proposed rates for 2024 and 2025?

#20 Is SMUD relying on "standard industry practice" as its justification for including the 9.2% scalar from its original TOD rates in the proposed rates for 2024 and 2025?

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

#21 Is SMUD relying on practices of regulated utilities in California (regulated by the CPUC) as its justification for including the 9.2% scalar from its original TOD rates in the proposed rates for 2024 and 2025?

#22 Is SMUD relying on practices of electric utilities in other states as its justification for including the 9.2% scalar from its original TOD rates in the proposed rates for 2024 and 2025?

Answers:

19. The scalar was included in developing the TOD energy charges in 2017, and the rate increases proposed for 2024-2025 apply to all components of the rate adopted by the Board in prior rate actions.

20. The TOD rate was adopted in 2017 following industry standard practice regarding marginal costing principles and the proposed rates for 2024 and 2025 are simply increasing and not changing the TOD rate structure.

21. The TOD rate was adopted in 2017 following industry standard practice which may or may not include CPUC regulated utilities.

22. The TOD rate was adopted in 2017 following industry standard practice which may or may not include utilities from other states.

From the answers to questions 21 and 22 SMUD has admitted that it may have followed standard industry practice from CPUC regulated utilities and utilities in other states. But neither CPUC regulated utilities nor utilities in other states are subject to Article XIII C of the California Constitution.

From the answer to questions 19 and 20 SMUD has admitted it is keeping and increase the 9.2% scalar, plus all the increases to it and the rates since then. Therefore all of the mistakes in the original TOD rates are also present in the proposed rates.

**SMUD's deception about the rates being based on "embedded cost", begun in 2019 at the rate hearing, continues and must be corrected**

This section of my report and recommendations continues for several pages. It is part of my recommendation to remove the scalar from the current rates, my first recommendation.

Please address this at the August 30, 2023 rate hearing. Explain the legal and policy and factual justification and basis for the 9.2% scalar (plus all rate increases since then) in detail and specifically. Your CEO and GM Reports have said the rates are based on your marginal cost. So did the NERA Economic Consulting letter, Appendix I in the 2017 CEO and GM Report. But at

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

the 2019 rate hearing after my presentation SMUD’s Jennifer Davidson claimed the proposed rates were based on your “embedded cost” (a term not used in this context in ANY SMUD document that SMUD has sent me in response to my inquiries), not on your marginal cost. This is a major and significant difference. Ms. Davidson gave a loose and vague definition (more of a description) of “embedded cost”, which is not found in ANY SMUD document.

The Rates Team’s answers to my questions about “embedded cost” mean that Ms. Jennifer Davidson’s explanation of the then proposed rates at the 2019 rate hearing was false. So do all the documents SMUD showed me in response to my 2019 Public Records Act request following the rate hearing and all the budget documents currently available on your budget page of your website.

Unfortunately the Board failed to question her about this explanation and accepted it and approved the proposed rates based on this false explanation.

My questions:

#26 SMUD claimed in the 2019 rate hearing that its rates were really based on its “embedded cost”. (Statement of Ms. Jennifer Davidson, SMUD employee.) Please define the term "embedded cost" as used by SMUD in this context.

#27 Regarding the previous question please explain the factual and historical basis for SMUD's alleged use of "embedded cost".

#28 Does SMUD claim, as of today, that its rates are really based on its "embedded cost"?

SMUD Rates Team’s answers:

26. Ms. Davidson used the term “embedded” in reference to SMUD’s budget. SMUD’s budget information is available on smud.org at Budget reports (smud.org)

27. See response to #26

28. See response to #26

During the public hearing in the 2019 rate action SMUD’s Board President Dave Tamayo and Chief Legal Officer Laura Lewis asked SMUD’s Jennifer Davidson to respond to Graham’s

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

presentation. Ms. Davidson's explanation is confusing and does not really address the issue in Plaintiffs' opinion. It did not appear that Ms. Davidson was familiar with or had read Appendix I (the NERA letter) or the RT02 rate design study. The gist of Ms. Davidson's response was that SMUD's marginal costs are really irrelevant to its cost justification – which of course begged the question of why the rate design study was ENTIRELY based on SMUD's marginal costs. Ms. Davidson offered no answer or explanation to that question. Neither President Tamayo, Chief Legal Officer Lewis, nor any of the other six (6) Board members dared to ask that question. Ms. Davidson claimed that SMUD's reasonable cost was its so called "embedded cost". See the transcript of the rate hearing on June 4, 2019, dated June 13, 2019 and prepared by THRESHA SPENCER, CSR No. 11788, Certified Shorthand Reporter, SCRIBE REPORTING & LEGAL COPYING, Certified Shorthand Reporters, 2207 J Street, Sacramento, CA 95816, pages 41 – 43.

On June 18, 2019 Graham sent SMUD his 3<sup>rd</sup> set of comments on the proposed rates for 2020 and 2021 via email. Among those comments were:

#1 During the rate hearing on June 4, 2019 SMUD implicitly acknowledged that it is extending and increasing the current rates and the scalar that is "baked into" or incorporated into the current rates as a result of the 2017 rate action by not disagreeing with my statement that SMUD is doing so.

#2 Jennifer Davidson's answer to the question of the scalar, that begins at 1:01:33 on the June 4, 2019 rate hearing meeting video, revolved around SMUD's "embedded cost" of providing electricity service and the difference between embedded cost and its marginal

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023



cost.

#3 Neither the 2017 nor the 2019 CEO and General Manager's Report and Recommendation on Rates and Services mentions the term "embedded cost" or the term "embedded" except once in connection with fixed costs (page 36 of the 2019 Report).

#4 SMUD has failed to cost justify its current rates or its proposed rates for 2020 and 2021 as required by Article XIII C of the California Constitution. SMUD failed to cost justify the 9.2% scalar that SMUD has proposed to extend and increase for 2020 and 2021.

#5 NERA Economic Consulting's letter, which was Appendix I on pages 109-112 of the CEO and GM Report for 2017, refers to several documents including the 2018 Residential Time-of-Use Rate (RT02) Design Study. That was the only document that provided cost justification for the then proposed rates. That study was all about SMUD's marginal cost, as I explained during the rate hearing. There was no mention of SMUD's "embedded cost".

Mr. Graham sent SMUD a Public Records Act request on June 13, 2019. He asked for electronic copies of records that describe, analyze or quantify SMUD's "embedded cost" for the current time of day residential rates; and for the proposed rates for 2020 and 2021

In response SMUD's Ms. Nicole Looney wrote to Mr. Graham on June 20:

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

Ms. Davidson used the term “embedded” in reference to SMUD’s budget.

SMUD’s budget information is available on smud.org at

<https://www.smud.org/en/Corporate/About-us/Company-Information/Reports-and-Statements/Budget-Reports>

(end of Ms. Looney’s response to PRA request)

However the term “embed” or “embedded” does not appear anywhere in any of these documents:

- CEO and GM Report for 2017 or 2019
- Resolution 17-06-09
- SMUD Budget letter for 2017, 2018 or 2019
- SMUD Budget summary (slides) for 2017, 2018, or 2019

It appears that the concept of “embedded cost” is either entirely made up by SMUD in response to Mr. Graham’s presentation at the rate hearing OR it was discussed and forms the basis of SMUD’s current rates but was NEVER described or analyzed in any SMUD documents.

Graham asked SMUD several questions about the proposed 2020 and 2021 rates via email on June 18, 2019 including these:

#6 Jennifer Davidson's answer to the question of the scalar, that begins at 1:01:33 on the June 4, 2019 rate hearing meeting video, revolved around SMUD's "embedded

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

cost" of providing electricity service and the difference between embedded cost and its marginal cost.

[http://smud.granicus.com/MediaPlayer.php?view\\_id=16&clip\\_id=2112](http://smud.granicus.com/MediaPlayer.php?view_id=16&clip_id=2112)

Where is SMUD's analysis of its "embedded cost" of its current rates or proposed rates for 2020 and 2021? In what document is that located, and is that document available on the SMUD website?

SMUD replied via email on June 24 with this answer:

Question #6 - Ms. Davidson used the term "embedded" in reference to SMUD's budget.

SMUD's budget information is available on smud.org at <https://www.smud.org/en/Corporate/About-us/Company-Information/Reports-and-Statements/Budget-Reports>

Graham downloaded and searched on the budget letters and budget summaries for the 3 most recent available years from that web page. Not a single document even mentions the term "embedded" or "embed". let alone discusses it and claims that the embedded cost is SMUD's reasonable cost of providing electricity service.

Graham's next question for SMUD on June 18 was:

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, [revised on August 28, 2023](#)

#7 “If as Jennifer Davidson claimed during the rate hearing the current rates are really based on SMUD's embedded cost then why didn't NERA Economic Consulting evaluate SMUD's embedded cost?”

SMUD’s reply was, “Question #7 - See response to question #6.” That of course does not answer the question.

Therefore it appears that SMUD lied, with all due respect Ms. Jennifer Davidson lied to the Board of Directors at the 2019 rate hearing about the justification for the 9.2% scalar, claiming it was all about “embedded” cost, which from ALL the documents and information SMUD has given me is a complete phantom, and not about the “marginal cost”, even though the CEO and GM Report for the original time of day rates and the 2019 rate action and the NERA Economic Consulting letter to SMUD RP&P, Appendix 1 on pages 109 to 112 of the 2017 CEO and GM Report, all state unequivocally that the rates were based on marginal cost.

SMUD’s deception and failure to answer these questions honestly continue to this day as one can see from the answers by the Rates Team to my questions #26, 27 and 28.

The Rates Team’s answer to my question #26 referred me to the SMUD website for your budgets.

<https://www.smud.org/en/Corporate/About-us/Company-Information/Reports-and-Statements/Budget-Reports>

A search of all of the following budget documents shows no use of the term “embedded cost” or “embedded”. The only uses of “embed” are in the context of SMUD’s commitment to embed Diversity, Equity and Inclusion in its work.

Budget reports

Read budget letters and summaries on our annual budget for the current and past 3 years.

2023 SMUD budget

- 2023 budget letter and summary

2022 SMUD budget

- Budget letter
- 2022 budget summary

2021 SMUD budget

- Budget letter
- 2021 budget summary

2020 SMUD budget

- Budget letter
- 2020 budget summary

Therefore SMUD’s deception and double speak and failure to address Jennifer Davidson’s 2019 false explanation that the TOD rates were really based on “embedded cost”, not marginal cost, continue to this day.

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

## **Discussion:**

Dear SMUD Directors,

You have heard me mention the above mentioned rate design study, which remains the most recent one SMUD has done. Four Directors have not chosen to reply to any of my messages in the current rate action. Thank you to those 3 who have. For the benefit of all Directors and anyone reading public comments on the SMUD website I will show you the rate design study. Images of each page are in this message and I hope you can see them.

### **Who cares? Why should you care?**

Because the SMUD Board adopted the conclusions and recommendations of the 2017 GM Report, including the specific rates proposed for residential customers which came from the rate design study. The Board of Directors adopted SMUD's first Time of Day rates in Resolution 17-06-09 on June 15, 2017.

The rate design study and the 2017 GM Report of which it was a part were the basis for SMUD adding an unconstitutional "scalar" - or I would call in inflation - of 9.2% to the original Time of Day (TOD) rates. The scalar has remained a part of all Time of Day rates since then. It has been increased along with all of SMUD's marginal costs every time SMUD has done a rate increase.

Today the CEO and General Manager is asking the SMUD Board of Directors to increase rates across the board by a fixed percentage. This is a recommendation to not only keep but increase the 9.2% scalar, which has already risen to about 10.7% through a series of rate increases.

### **How long has the 9.2% scalar been a part of SMUD's electricity rates?**

Since the first Time of Day rates were adopted.

### **Can SMUD do anything they want with electric rates?**

The California Constitution says a tax must be approved by the voters; a charge or fee or other exaction which exceeds the government's reasonable cost of providing the service is, by definition, a tax. (There are other possible exceptions, none applicable here.) If you really understand the rate design study you will understand why the current rates are unconstitutional and the rates for 2024 and 2025 proposed by the CEO and GM are also unconstitutional. SMUD has dodged this issue every time I have raised it, including at the 2019 and 2021 rate hearings. It is time to address it squarely and honestly and thoroughly.

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, [revised on August 28, 2023](#)

### **Where did the latest rate design study come from?**

It came from SMUD! In 2017 SMUD published a CEO and GM Report and Recommendation on Rates and Services (the “2017 GM Report”). That Report contained, as Appendix I, a letter dated December 6, 2016 from NERA Economic Consulting addressed to SMUD’s Resource Planning and Pricing Department (RP&P). The subject of the letter was NERA’s independent review of SMUD’s 2016 Marginal Cost of Service (MCS) Study and its proposed residential Time of Use (TOU) rates for the period 2017 – 2019. Appendix I was pages 109 – 112 of the 2017 Report.

NERA wrote that it had reviewed several SMUD documents including the then current rate design study. NERA referred to the Rate Design Study as "2017 (sic) Residential Time-of-Use Rate (RT02) Design Study," dated November 30, 2016. (page 109 of 2017 GM Report)

The Rate Design Study is not a part of the 2017 GM Report or any other GM Report. You can get a copy of it from SMUD through a Public Records Act request, as I did. It is 16 pages long and labeled on page 1 as “2018 Residential Time-of-Use Rate (RT02) Design Study.”

The rate design study accounted for all of SMUD's marginal costs and the overall marginal cost for delivering electricity to its customers. The conclusion of the rate design study was certain proposed electricity rates (prices) for each of the 5 time of day periods. The 2017 GM Report recommended adopting those proposed electricity rates and making them the District's electricity rates for the years 2018 and 2019.

### **Why is the 2017 and 2018 rate design study relevant to the current rate action or rate case?**

There are multiple true answers to this question:

Because SMUD is still setting rates according to the conclusions and recommendations of the 2017 GM Report, which included the proposed rates which included the 9.2% scalar.

Because SMUD has never done another rate design study since then and every odd year since then SMUD has increased rates across the board (for all customers) by a certain percentage, thereby inflating what SMUD called a "scalar" of 9.2% as well as increasing the total marginal cost.

At the second public workshop, on August 3, 2023, SMUD’s Mr. Alcides Hernandez said this.

“Yes, you say that in 2017, I think you were making reference to a study, a redesign study and SMUD has done a new study. That is correct. We haven't done a new study. The only 2017 that you were making reference, if I am understanding that right, the question. Yeah, it was the study

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

that was done back around that year to propose at the time a new residential rate. We have not designed any new residential rates, so we haven't done any new study.”

(Transcript of 2<sup>nd</sup> public workshop, page 11 unnumbered.)

In response to a couple of my questions during the current rate action and similar questions in the previous 2 rate actions SMUD staff has acknowledged that SMUD has never backed out or divided out the percentage of the rates attributed to the scalar. The scalar remains a part of the current rates and has been a part of all residential rates since SMUD’s first TOD rates were set.

SMUD staff likes to dodge questions about the scalar, claiming such questions are not relevant to the current rate action, but they are and staff knows better. The current (2023) CEO and GM Report does not mention the word scalar, but it does say the current rates are proposed to be increased 2.75% on each of January 1 and May 1, 2024 and 2025. Indirectly they are admitting the CEO and GM Report proposes to increase the scalar, and it does not propose to back the scalar out or divide it out from the current rates when setting the proposed rates.



Recommendations, continued

**#2 Publicize the smart meter opt out program and the analog meter option**

SMUD should plan rates sufficient to raise money to enable it to publicize the smart meter opt out program and the analog meter option in a way that is intended to make as many residential customers as possible aware of it, how it works, the costs, and the customer's options. Publicize the above through easily visible and legible (not tiny font) and conspicuously placed notices on the SMUD home page, one article per quarter in the Connections newsletter, a single complete sentence on the face of page 1 of each residential electric bill, all leading to (showing the web address to) the smart meter opt out page.

Allocate one million dollars for each of the years 2024 and 2025 to pay for this, which will be an addition to the proposed rates. Obtain the necessary money for this by raising rates sufficiently to pay for this.

SMUD created its residential smart meter opt out program by resolution of the Board in 2012. A year later SMUD amended it to make the program more user friendly. This was a resolution in 2013, in March. Resolution 13-03-08 and attachment C.

Attachment C said in relevant part:

“Alternative Meter: The preferred alternative meter shall be a non-communicating digital meter. In lieu of a non-communicating meter, opt-out customers may elect to have a new analog meter installed.”

For ten (10) years this has remained SMUD's great secret, kept from its customers by deception and concealment in order to prevent customers from knowing and being able to exercise their right to opt out. It is time for this program to be fully publicized.

SMUD knows, or at least was told and shown, that smart electric meters are hazardous to human health. They transmit, according to the SMUD website, over 10,000 times per day and up to 240,000 times per day. This is the meter shaking hands with the network over and over again.

For health effects of smart meter radiation or generally microwave radiation see the videos and minutes of the board meetings from about early 2014 through May of 2016.

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

Recommendations, continued

**#3 Add expense data to comply with the Public Utilities Code**

Correct the omission in the CEO and GM’s Report, volumes 1 and 2, which fails to comply with the Public Utilities Code, section 14404.3 (e), which says in relevant part:

The report and recommendation of the general manager of an electricity district filed pursuant to Section 14403 shall include all of the following:

(e) In sufficient detail to permit an assessment of the need for any proposed changes, a statement of each category of expense for the preceding two years, and estimates of each category of expense for the two years following.

SMUD has failed to do this. In response to an emailed question the Rates team responded on August 2, 2023:

“Hello Mr. Graham,

Page 88 of the GM report has years 2023 – 2025 and page 17 of the Report of Independent Auditors at the end of the GM report has years 2022 and 2021.

Thank you,

SMUD Rates Team”

The author followed up on August 6, 2023 by pointing out in detail the categories of expense in the CEO and GM Report for the preceding two years and the two years following. The categories are very different and the data do not permit an assessment of the need for any proposed changes. This should be posted on your website.

SMUD Rates team responded on August 11, 2023:

“Good afternoon Mr. Graham,

The prior years financial statements are the audited financial statements that are presented in a FERC format. The future projections of financial statements are presented in the budget format.

Per your request, we provided you with the information in the same format.

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

Thank you,

SMUD Rates Team”

SMUD has chosen to comply with the FERC format requirements for financial data but has failed to comply with the format requirements in Public Utilities Code, section 14404.3 (e).

Therefore my recommendation is to begin the rate process over again and complete it, this time with a proper CEO and GM Report.

Recommendations continued

**#4 Provide cost justification for the proposed rates and start the rate process over again.**

Either do a new rate design study or a new rate costing study and either way show the actual reasonable costs of providing electricity service, as the original rate design study (2017 – 2018) (RT02) showed. Provide a direct link from SMUD’s costs to the proposed rates and propose new rates based on SMUD’s reasonable cost of providing electricity. (Article XIII C, Sec. 1 (e) (2)). Also define and describe what SMUD must do to “cost justify” the proposed rates. Begin the rate process anew with a new and proper CEO and GM Report as described.

Per SMUD staff (Rates Team) answers to emailed questions, SMUD has not done a new rate design study since the one mentioned in the 2017 CEO and GM Report (RT02). Said rate design study added up marginal cost components (see description under #1 of this report) in terms of dollars per kilowatt hour. This is the key unit because it is the unit which appears on customers’ electric bills. The RT02 rate design study did this but the 2022 Rate Costing Study did not do this.

The current CEO and GM Report says, in a section called “Compliance”:

“The cost-of-service analysis that demonstrates cost-justification for the proposed rates is the SMUD Rate Costing Study (‘2022 Rate Study’) which is incorporated herein by this reference.” (page 76)

Unfortunately the 2022 Rate Costing Study does not follow the format of the 2017 – 2018 RT02 rate design study. It does not present final figures in terms of dollars per kilowatt hours, which is of course the relevant unit of measurement used in the rate resolution which SMUD’s Board approves at the end of every rate process and used on customers’ bills.

By email on August 3, 2023 the author wrote:

The CEO and General Manager's Report for the 2024 and 2025 rates says, "The cost-of-service analysis that demonstrates cost-justification for the proposed rates is the SMUD

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

Rate Costing Study ('2022 Rate Study') which is incorporated herein by this reference."  
(Page 76)

#1. What is cost justification? What does SMUD have to do to cost justify the proposed rates?

The author also handed this question, among others, to SMUD staff at the 2<sup>nd</sup> public workshop, held on August 3, 2023 and asked it during the workshop.

SMUD's answer, on August 4, 2023, was, "The 2022 Rate Costing Study is what we used to evaluate that marginal costs are increasing."

How is that an answer to my question?? It's not. Again the question was, "#1. What is cost justification? What does SMUD have to do to cost justify the proposed rates?"

All you have done is identified a document and stated your qualitative conclusion from it. But what is cost justification? You still haven't said it. What burden or obligation does SMUD have to satisfy, in a rate case or rate action, to justify the rate increase based on costs? Identifying a document (your 2022 Rate Costing Study) and stating its qualitative conclusion does not answer the question. Any time you set out to do a study you must have an objective in mind. There must be something you are trying to achieve or prove. What was it? Another way to understand (and state) my question #1 from August 3 is, "How does SMUD cost justify its proposed rates?" Please explain.

Mr. Hernandez did not answer the question at the public workshop on August 3. Here is what he said on the subject: "You made reference about page 76 that cite the rate costing study from year 2022. I think we provided a copy in one of those responses from the emails, and I think you made reference about the cost justification on that. Normally, when we do a costing study is ... A study that helped us inform how cost went, and the 2022 study shows that the cost went up. So we are corresponding increasing our rates to reflect that trend."

It's clear what he said after all the logistics. Mr. Hernandez said, "... the cost went up." Very well. I am sure you all knew your marginal cost components and total marginal cost went up before you ever did the 2022 Rate Costing Study. But this does not answer the question, "What is cost justification? What does SMUD have to do to cost justify the proposed rates?"

If "the cost went up" were all that is necessary then why should the proposed rate increases by four times 2.75%?! Why not 2.0% or 1.5%? Or why not 5.0%? But this is about your conclusion and my question here is about your obligation. Presumably you have an obligation to cost justify your proposed rates. What does this entail? What do you have to do? Neither you nor Mr. Hernandez has answered the question.

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, [revised on August 28, 2023](#)

SMUD has claimed the 2022 Rate Costing Study provides cost justification but has failed to define or describe what cost justification is.

The author wrote to SMUD Rates Team on August 13, 2023 and said in relevant part:

Your answer in your August 4 email to my question #2 from my July 13 email, "What are the conclusions of the 2022 Rate Costing Study?", was simply, "The 2022 study informs us that marginal cost components have increased."

Although I didn't ask about the conclusions of the 2022 Rate Costing Study at the public workshop on August 3 Mr. Hernandez said this on the subject: "A study that helped us inform how cost went, and the 2022 study shows that the cost went up. So we are corresponding increasing our rates to reflect that trend. The actual amount of the rate increases is driven by the categories that we already provided in the presentation and those are needed to meet financial obligations and key metrics that are described in one of the attachments in the report."

What is the problem here? I am sure you can see the problem, yet you, Mr. Hernandez and the 2022 Rate Costing Study itself all failed to provide the key information; namely, *how much did your marginal cost components increase?! Will you tell me?*

On August 17, 2023 the SMUD Rates Team answered this question, sort of.

*SMUD has already sent the 2022 Rate Costing Study. Attached is the previous 2020 Rate Costing Study. If you compare both studies, you will see the difference in costs.*

This may be cost justification but the current CEO and GM Report fails to mention the 2020 Rate Costing Study.

#5 Correct the Brown Act violation which the Board committed at the April ~~18 20~~, 2023 Finance and Audit Committee and special Board of Directors meeting

by making a decision on rates options with no or incomplete public notice.

In response to the author's August 13, 2023 emailed question:

What is the connection between the 2022 Rate Costing Study and the actual numbers in the proposed rate increases? From where did you get 2.75% (on January 1 and May 1 of each of the next 2 years). Why are there four proposed rate increases and why are they

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

2.75% each? Why can't they be 2.0% or 1.5% each? What is the quantitative basis for the numbers (4 times 2.75%) in your proposed rate increases?

I will appreciate thorough answers.

Thank you in advance and best wishes,

SMUD Rates Team responded on Thursday, August 17th, 2023 at 3:58 PM as follows:

Hello Mr. Graham,

Please see responses to your questions in *red* below.

In relation to the connection between the 2022 Rate Costing Study and the 2.75% increases:

SMUD's proposed rate increases for 2024 & 2025 are needed to ensure the forecasted revenue is sufficient to cover the projected costs for 2024 and 2025 which includes commodity costs, operations and maintenance, public good, capital, and debt service. Although we do have options as to the timing and amount of the rate increase, the overall revenue requirement remains the same. We need an additional \$75M in 2024 and \$171M for 2025. In our April presentation to the Board of Directors, we gave them several options to choose from that resulted in the same revenue requirement with different rate increase amounts and different timing options. They selected the proposal that is represented in the General Managers report – 4 rate increases of 2.75% each in January and May of both 2024 and 2025. The General Managers report spells out the major cost drivers we're seeing and the amounts, and that has also been shared in our public meetings.

Thank you,

SMUD Rates Team

As you may know the Ralph M. Brown Act is contained in section 54950 *et seq.* of the Government Code. It sets requirements including publication of an agenda for all meetings of local government governing bodies. Among those is the requirement for the agenda to contain each item of business on which the governing body may take action. Although the description of each item can be very brief (15 or 20 words) each item must be mentioned.

Did SMUD comply with the agenda requirements for the April ~~1820~~, 2023 meeting of the Finance and Audit Committee and special meeting of the Board of Directors? No.

The amended notice agenda for the April 20, 2023, attached and meeting, incorporated into this Report by this reference, does not mention any such option which was going to be presented to the Board, even in the very brief form which as a bare minimum the Ralph M. Brown Act on

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023

meetings of local government requires. It says:

In order to preserve the function of the Committee as advisory to the Board, members of the Board may attend and participate in discussions, but no Board action will be taken. The Finance & Audit Committee will review, discuss and provide the Committee's recommendation on the informational agenda items, and the Board of Directors will take action on the Closed Session Agenda.

The following sentence is crossed out on the amended notice of the meeting: "In order to preserve the function of the Committee as advisory to the Board, members of the Board may attend and participate in discussions, but no Board action will be taken."

The draft minutes for the April 20, 2023 Board of Directors meeting, contained in the information packet for the May 18, 2023 meeting, does not mention the above described staff presentation to the Board, the set of options presented, or the Board's choice as described above: "They selected the proposal that is represented in the General Managers report — 4 rate increases of 2.75% each in January and May of both 2024 and 2025."

The board took action, which according to the amended meeting notice it was not going to do, by selecting among the staff's several options for the amounts and dates of hypothetical rate increases shown on slide 7 to the Exhibit to Agenda Item 1 of the meeting. The Brown Act prohibits such action unless it is on the agenda. This is a Brown Act violation. I am asking you to cure it, whatever it takes.

Begin the rate process over and this time comply with the Brown Act.

This is the end of my report and recommendations on alternatives to the rate changes proposed by the general manager.

Please consider this at the rate hearing, as I have asked.

Thank you very much.

Report and recommendations on alternatives to the rate changes proposed by the general manager for 2024 and 2025, revised on August 28, 2023