

Recommended alternatives to the electricity rates and  
charges proposed by the General Manager

SMUD Board of Directors meeting and rate hearing  
August 30, 2023

By Mark Graham





# What drives my interest in this?

- Smart electric meters and associated health hazards

The residential smart meter opt out program

The analog meter option

SMUD's secrecy and concealment on all of the above.



# My biggest complaint is:

- SMUD is imposing, extending and increasing a special tax without voter approval, which violates the California Constitution, Article XIII C.



My 2 biggest complaint is:

- SMUD has failed to cost justify the proposed rates.



# This requires approval of 2/3 of the voters

(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.

(California Constitution, Article XIII C, section 2(d))



# Definition of a tax

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

(California Constitution, Article XIII C, section 1)

(Note: there are 7 exceptions and we will get into them later.)



# The key question is:

Are SMUD's rates "imposed"?

The next question is:

Do SMUD's rates fit any of the 7 exceptions to the definition of a tax?



# SMUD claims its rates are not “imposed”

“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 for 2023, page 76)



# The Court of Appeals for the Third Appellate District has rejected SMUD's argument

The quotation is long and will take up 4 slides.

“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



# The Court of Appeals for the Third Appellate District has rejected SMUD's argument, 2 of 4

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



# The Court of Appeals for the Third Appellate District has rejected SMUD's argument, 3 of 4

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



# The Court of Appeals for the Third Appellate District has rejected SMUD's argument, 4 of 4

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



## But the California Court of Appeals has rejected SMUD's argument

The quotation is long and will take up 4 slides.

“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



# Definitions of extending or increasing a tax

- A tax is **extended** when an agency lengthens the time period during which it applies. *Gov. Code, § 53750, subd. (e)*.



# Definitions in the Government Code, section 53750

(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.



# Definitions in the Government Code, section 53750

(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.



# Do SMUD's rates fit any of the 7 exceptions to the definition of a tax?

The only possible exception is this one, (e)(2):

(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.

(emphasis added)

Article XIII C, Section 1



# Do SMUD's rates exceed your reasonable cost of providing electricity?

SMUD has only done rate design study, the RT02 rate design study in 2017 - 2018, for the original time of day rates.

Appendix I of the 2017 CEO and GM Report, a letter from NERA Economic Consulting, said NERA reviewed the rate design study.



# The RT02 rate design study based the new time of day rates on SMUD's marginal costs.

The Rate Design Study 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 final addition to marginal costs was made in Tables L and M on page 14. (I have shown you the RT02 rate design study.)



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%.

**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
	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





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%.”



The 9.2% scalar is not part of SMUD's reasonable marginal cost of providing electricity

Therefore exception (e)(2) does not apply, SMUD's rates are taxes, and you must get voter approval.



SMUD has planned these rates based on its desired revenues

Another court has said a local government cannot base its rates on predetermined budgets.



## Recommendation 1

Remove the current amount of the scalar, which is about 10.5%, from your rates and then apply the four increases in the amounts and on the dates proposed by the CEO and General Manager.



## Recommendation 1a

Show SMUD customers any case law or legal authority supporting SMUD's interpretation of "imposed."