

Manteca, California

September 3, 2009

The Board of Directors of the South San Joaquin Irrigation District met in special session in District parking garage at the hour of 9:00 a.m.

Upon roll call the following members were noted present:

DIRECTORS: HOLBROOK KUIL KAMPER SCHULZ ROOS

Also present were Secretary/Manager Shields, District Counsel Emrick, Utility Systems Director Battles and Communications Coordinator Saylor.

President Kamper called the meeting to order. Item number 1, Public Hearing to Consider Adoption of Resolution 09-12-E to Apply to San Joaquin Local Agency Formation Commission to Provide Retail Electric Service and Item 2, approve District Warrants. Kamper explained that the nature of the meeting was concerning the application with LAFCo for addition of services. The District has published its intention to hold the public hearing in local newspapers as required by law. Speaker cards need to be completed by anyone wishing to address the Board. Written comments also will be accepted. Speakers will be given a maximum of 3 minutes. The order of the meeting will be as follows, presentation by staff, Board questions, public comments and vote.

President Kamper declared the public hearing open and asked Jeff Shields, General Manager to make the staff presentation to the Board.

Shields addressed the Board and the audience. He thanked them for the opportunity to speak. He said that the power point presentation was usually shown on a projector screen but because the meeting was being held outside, hardcopies of the presentation had been handed out to everyone. Shields began by going over the list of Utility industry experts that the District has employed to help put together its plan for service. The list is as follows: Siemens Engineering Inc., for inventory and design; Borismetric, economics; R.W. Beck, valuation; Shell Energy North America, power supply; Davis Wright Tremaine, legal & regulatory; Aspen Environmental, CEQA; Consol, benefits program implementation and Stradling Yocca Carlson & Rauth, Bond Counsel. Shields noted the District's commitment to service and reliability. Shields noted that for over 100 years the District has been delivering irrigation water to its service area, for 50+ years through Tri-Dam it has been producing hydro power, for 5 years it has been delivering drinking water to the communities of Manteca, Lathrop & Tracy and in 2008 it began producing solar power at its Solar Energy Plant. In determining the feasibility of acquiring PG&E's electrical system a determination of fair market value needed to be made. The fair market value of PG&E's electrical distribution system within SSJID's service area as determined by R.W. Beck is 65.1 million dollars, including severance. Necessary construction for separation from PG&E's system and upgrading reliability would cost another \$63.8 million. The District would employ 68 new permanent employees and contractors. The District's Board is committed to reducing retail electric rates by 15 percent. The Plan of Service includes the District paying exit fees to PG&E, funding public benefit programs at 4% and paying 2.5% franchise fees to Manteca, Escalon & Ripon in lieu of taxes. Shields said that after much study it has been determined that the District could attain its goal of a 15% reduction in electrical costs because of several factors. The District has revenues to cover costs of operation and debt service, it has an initial \$10 million capital contribution for unexpected operational costs, the District has ownership of electric generation facilities and most important, it is not part of a "for profit" corporation. Shields reiterated that the project will benefit the District's service area by reducing electric rates by 15 %, increase local job opportunities, will improve customer service & service reliability and will mean the District will have local control and accountability for its electrical service. In conclusion, Shields said that now more than ever, people are struggling to make ends meet and SSJID's effort would put money back into the local economy while reducing individuals' electrical costs. Shields turned the meeting back over to the Board.

President Kamper said that the Board did not get to this point by chance. It has been researching the idea of a public utility for 25 years. It is a good idea for this community and now is the time to proceed. Kamper asked if there was any other Board comment. There being none, Kamper addressed the audience, stating that today's hearing is an opportunity for the Board to hear from

the public concerning this issue. He said that he would be calling 3 names at a time and asked that they speak in order given. He reminded the speakers that they each had a maximum of 3 minutes to address the Board. The first names to be called were, Wendy Benavides, Marco Mlikotin and Jack Van Lewen.

Wendy Benavides introduced herself. She said she was not an accountant but she felt it didn't take one to figure out that a 15% reduction was doable. She asked the Board to please move forward.

Marcos Mlikotin, president of California Alliance to Protect Private Property Rights spoke next. He said his group was founded in 2005. Mr. Mlikotin is opposed to the District acquiring PG&E's facilities. He said that taking private property through eminent domain is poor business practice. He believes that it discourages other business opportunities. He emphasized that it is one of our fundamental rights to own private property and he is opposed to the District's application for expansion of services. Mr. Mlikotin thanked the Board for their consideration.

Jack Van Lewen did not respond.

Kamper called, Brian Regnart, Vickie Mello and Emily Barnett to speak.

Brian Regnart introduced himself as the Executive for Citizens to Stop the Power Grab. Mr. Regnart said that Mr. Shields presentation did not mention eminent domain. He said that the District has wasted public monies, 12 million to date, to do the same exact job that PG&E is doing. He feels that the District should forgo its efforts to get into the electrical business and return the money to the people of SJ County. Next to speak was Vickie Mello

Vickie said she is a long time resident of Escalon. She has a 91 year old mother who is on a fixed income. Social security is being cut but utility bills continue to rise. The District's proposed 15% reduction would be a great help to people like her mother. Ms. Mello expressed great respect for the Board of Directors of SSJID. She said she appreciates that this Board does not base its decisions on contributions made by PG&E.

Emily Barnett, PG&E Government Relations Representative spoke next. Ms. Barnett introduced herself and said she has been working for PG&E for 7 years. She believes that it is wrong for the District to attempt taking over PG&E's service area by eminent domain. She said that the application the District is proposing to send to LAFCo is almost identical to the 2006 application that was denied. She believes it has the same flaws. Ms. Barnett addressed the Board and told them to make sure they have all the information they need. She predicts that there will be court battles at the public's expense if the District proceeds with its plans. She said that the government will require the District to pay the highest appraised price for PG&E's facilities, which she estimates at 400 million dollars. Ms. Barnett said that clearly the Board has no idea about what they are getting into. Director Kamper told Ms. Barnett her time was up.

Kamper called Fred Paulus, Robert Brock and Barbara George to the podium.

Mr. Paulus introduced himself as an Escalon farmer. He told the Board that the decisions they have made in the past have for the most part benefited farmers, but now they have an opportunity to benefit the whole District. Mr. Paulus said that eminent domain is a process that is for the benefit of the public. He believes that this will be a benefit to all of us and that the future looks bright.

Robert Brock spoke next. He introduced himself as an employee of PG&E. He said if the District takes over the electric service in the District, he is afraid he will be out of a job. He said working for PG&E has ensured his stable employment. He and his co-workers have the experience to make reliable repairs. Mr. Brock said he doesn't believe that 65 employees will be enough to cover all the service area. Mr. Brock ended by suggesting that the District should focus on delivering water to the community.

Barbara George, with Women's Energy Matters, said she is in support of the District going forward with its plans. She said that community control has always proven to be less expensive. She gave the example of SMUD in Sacramento, which delivers cheaper and greener power. Ms. George said that PG&E is advertising green energy, but spending money on ads instead of

upgrading its facilities. She stated that PG&E has missed its targets for renewable energy. She also said that employment issues should not be a concern because PG&E employees could work for SSJID. She ended by saying that we need stable rates, clean power and local jobs.

Next to speak, Ron Gandolfo, Tod Nordman and Sid Browning

Ron Gandolfo introduced himself as just a local guy who is sick and tired of what's happening with PG&E and their strong arm tactics. He said he is not a part of any big groups but wanted to express his support of the District's efforts. He said SMUD in Sacramento does a great job delivering power. Ron also said that he thinks it's great that the District produces solar power and he would love to tour the facility. He ended by saying God bless what you are doing and he is sure that the District will defeat PG&E.

Tod Nordman introduced himself as a PG&E employee. He said he wanted to talk about employees and customer service. He said that the Board needs to consider the work experience that PG&E linemen have and what is involved in keeping the system running 7 days a week - 24 hour a day.. He wanted to know who was going to fix downed power poles on holiday weekends. He said that the District needs a plan to service in a time of disaster.

Sid Browning spoke next. He introduced himself as a local small businessman. He said we need reliability in our power company. Browning said that the District offers local accountability and he wishes the District all the best.

Kamper called Curt Paulus, Anna Martinez and Lue Hall

Curt Paulus expressed his support but declined to speak.

Anna Martinez, Executive with IBEW Local 1245 and PG&E employee for 29 years. Ms. Martinez said that IBEW represents both PG&E and SSJID. She stated that the issue here is what's best for the customers. She believes that changing electrical service will hurt both employees and customers. She said that IBEW has a duty to all its members. IBEW favors neither public nor private, just status quo. She asked the Board to please consider the employees and not to go forward.

Next to speak, Matt Visser, Rick Dawson and Jennifer Sanguinetti.

Matt Visser introduced himself as a fourth generation farmer. He said he has full confidence in the Board. He stated that local customer service is wonderful and also that farmers would benefit by a 15 % reduction in there utility bills. He thanked the Board for all their hard work.

Rick Dawson stated that he is neither for nor against the District getting into the power business. He is concerned that water projects will be put off because of this take over. He said as an example MID has increased its water rates for its farmers. He said he is worried that farmers would be paying the price. Mr. Dawson said he wants cheaper electricity but not at the expense of ag water.

Jennifer Sanguinetti said she lived in a house serviced by PG&E and had 8 outages in 2 ½ years. She now lives in a house serviced by MID and has had no outages in 2 ½ years. She said she told her husband if they move again it can't be to a house serviced by PG&E. She told the Board that she knows they care about the community.

Next Mark Oliver, Bonnie Medina and Gary Breshears

Mark Oliver said he is not representing anyone but the Oliver Family. He said the money saved will benefit the community. He said that public hearings for PG&E are held in San Francisco but if SSJID takes over they will be held in Manteca. Mr. Oliver said that in 2006 LAFCo staff recommended approval of SSJID's application but because the District didn't play political games with the LAFCo Board the District lost.

Bonnie Medina submitted a written statement. "Obama's energy plan to tax dirty energy to fund clean energy will cost users \$175.00 yearly according to the GAO up to \$1,000-\$2,000 yearly by another group. (in Sunday's Record) PG&E has dirty energy, SSJID has clean energy".

Gary Bressears declined to speak but was in support.

Ken Zuidervaart introduced himself as a local resident. He stated that he does not agree with government control but believes local control is best. He said he recently questioned the amount of his PG&E bill and was told to write the PUC a letter to complain. Ken said that he is in favor of the District's bid to expand its services to include electricity because the District is run by a local Board. He knows he could call them directly if he had a problem.

Leo Zuber addressed the Board. He said that no one knows the future but for 100 years the District's Board has made good decisions. He said that we do not need to put this decision to a public vote because every 4 years the public has a chance to vote on their choice of Board members. People have consistently voted to keep Board members that want to get into electricity.

Andrew Sephos was the last speaker. He told the Board that he feels this is the perfect time in history to restore local control. The more local influence the better.

The following written statements were submitted.

Robert V. Harden II "I, as a Manteca resident, fully support your efforts to get us out of PG&E's grip. Keep pressing forward. If you need me to sign a petition, you've got it. Robert"

Robert A. Hansen, Commander, USN (ret.) "I was born in Modesto and have lived in this area for most of my young and older life. I was raised on Jacktone Rd. and am currently a 19+ year resident in Manteca. I would like to state that I'm certainly in favor of the SSJID taking over from PG&E so we can trim our electric prices down instead of having to pay some outrageous wages and bonuses to their CEO's! I would like to see the LAFCo look towards the local population rather than favoring PG&E. Sincerely, Robert A. Hansen"

Kurt Danziger "Dear Dave Kamper, President of the Board, and all SSJID Board Members. My name is Kurt Danziger and I reside at 389 Noni Ave., in Escalon. It has been my privilege this past year to have headed the Publicly Owned Utility Customer Association, (POUCA). Very shortly, POUCA will have successfully accomplished its goal of ending now and forever PG&E's billing of nonbypassable charges to 8,500 Modesto and Merced Irrigation District's NMDL customers. During negotiation with the District's and PG&E to resolve this matter it was my distinct pleasure to have met and had the assistance and input of your General Manager, Jeff Shields. Mr. Shields is one of us as a homeowner in a Modesto Irrigation District new retail service area and was extremely insightful and helpful in the discussions and educating me in the history of electrical distribution in the Central Valley. Please forward my deepest thanks to him.

After talking with Jeff recently, he asked me to review the proposed SSJID's LAFCo application to acquire most of the PG&E retail service distribution service area that is located in SSJID's service area, and would I voice my support.

I spent that weekend reading the entire document...ouch. Seriously, I would like the SSJID Board to know that I do support 100% your application to acquire/condemn whatever the vernacular is, PG&E's retail electrical distribution service in the SSJID's service area.

This to me is a natural progression of growth for SSJID. Not only is SSJID qualified, funded and ready to expand retail electrical service to more of its service area, it will do so in a manner that will directly benefit the local population with rate reduction, better service and an accountability at a local level. This is a win win for everyone.

I therefore would ask the Board to vote unanimously in favor of the LAFCo application.

Thank you for your consideration,
Kurt Danziger
POUCA"

George M. Soneff, Manatt, Phelps & Phillips, LLP,

“To SSJID Board Members:”

“ Pacific Gas and Electric Company objects to SSJID’s proposed adoption of a resolution to apply to the San Joaquin County Local Agency Formation Commission (SJ LAFCo) for approval to enter the retail electricity business (Application).

SSJID’s Actual “Plan” is for Lawsuits

The implications of SSJID’s Proposed Application are significant. If SSJid’s Application goes forward as proposed, the following indisputable facts will undoubtedly lead the parties into expensive litigation:

- PG&E has provided reliable electric service to the residents of San Joaquin County for over 100 years. PG&E owns the extensive electric distribution system necessary to serve county residents, and our experienced employees—many of whom live in San Joaquin County –have the history and knowledge necessary to keep our system operating day to day.
- SSJID, on the other hand, has never before provided retail electric service, and owns none of the equipment necessary to do so. Its claims of experience in other businesses, such as water supply and electric generation, are not relevant here. Accordingly, SSJID’s “plan” for entering the retail electric business is to take over PG&E’s distribution system and use this system to attempt to provide the same service that PG&E already provides.
- PG&E has made it clear to SSJID on multiple occasions, including at the SJ LAFCo just a few years ago, that PG&E’s system is not for sale, and that PG&E has no intention to cease operating its system. SSJID thus plans to use eminent domain to seize control of PG&E’s system. Such a seizure, however, would require prosecution of a complex lawsuit in which SSJID would have to undergo two separate trials, resulting in substantial public expense;
 - The first trial would take place before a Superior Court judge who would decide whether SSJID is permitted to exercise the power of eminent domain to take PG&E’s property. One of the principal issues in the trial would be whether SSJID has established that its proposed use for PG&E’s property “is a more necessary use than the use to which such property has already been appropriated” by PG&E. (Code Civ. Proc. §1240.650.)
 - If SSJID prevails in the first trial and in any appeals related to that trial, then a second trial would take place, in which a jury would decide how much money SSJID must pay PG&E for its taking of PG&E’s property. California law would require the jury to determine the value based on “the highest price” the property would bring in the open market (Code Civ. Proc. §1263.320[a])—which would likely mean that SSJID must pay many millions of dollars more—indeed, hundreds of millions of dollars more—than it anticipates. Under such circumstances, there is no way whatsoever that SSJID could provide rates 15% lower than PG&E’s. In fact, it is very likely that rates would increase under the proposed takeover.

SSJID’s proposed Application does not acknowledge these facts. The proposed Application is based on assumptions about the timing of service and the cost of acquiring PG&E’s property that do not forthrightly address the extraordinary risks that SSJID is voluntarily undertaking by embarking on this litigation plan. Should SSJID proceed, it only means huge fees for lawyers and consultants, not financial benefits for District residents.

The “Plan” is Defective

The proposed Application is not new. SSJID recently spent several years (from 2005 until 2008) pursuing a nearly identical plan, which pursuit resulted in two unanimous Court of Appeal decisions rejecting SSJID’s contentions. (SSJID v. San Joaquin Sup. Ct., 162 Cal App. 4th 146 (2008), rejecting SSJID’s claim that SJ LAFCo had no power to review the Application; and SJ LAFCo v. San Joaquin Sup. Ct., 162 Cal. App 4th 159 (2008) rejecting SSJID’s claim that it was entitled to subject SJ LAFCo staff and commissioners to sworn interrogation.)

We urge the Board to examine the considerable costs that SSJID incurred through 2008 in connection with its prior attempt to enter the retail electric business and obtain approval at SJ

LAFCo –over \$12 million. We submit that this Board’s approving the current proposal would repeat that costly mistake.

The proposed Application glosses over the prior events, claiming that this is a “new plan” and that SJ LAFCo rejected the prior proposal”...on the grounds that SSJID had provided insufficient information.” (Application, p. 1-6) But that is not what happened. In truth, SJ LAFCo passed a formal resolution denying SSJID’s Application on the ground that SSJID “did not demonstrate its administrative, technical, and financial capabilities to provide retail electrical service to the satisfaction of the Commission pursuant to the requirements of electrical service to the satisfaction of the Commission pursuant to the requirements of Government Code Section 56824.12.” (SJ LAFCo Resolution No. 1157 (Sept. 22, 2006.).

In short, SJ LAFCo denied SSJID’s prior Application because SSJID could not prove to SJ LAFCo that it is capable of providing retail electric service. SSJID did not possess the equipment, personnel, experience, and funding necessary to provide the service. The exact same is true today. What SSJID has is a litigation plan by which it *hopes* to seize the physical system that PG&E owns at a cheap price, but that is not the “demonstrated capability” that California law requires as a prerequisite for LAFCo approval. Indeed, the requirements for LAFCo approval have tightened since SJ LAFCo rejected SSJID’s first application, yet the basic plan to take over all of PG&E facilities and operate them for the exact same purpose has not changed.¹

Moreover, while SSJID states in its Application that it may choose to forego the proposed takeover if things don’t go according to its unrealistic estimates,² a court may refuse to allow SSJID to abandon its condemnation effort. (Code Civ. Proc. §1268.510[b].) And even if the courts should permit such an abandonment, SSJID would be required to pay all of PG&E’s attorney’s fees and other litigation costs. (Code Civ. Proc. §1268.610). Simply put, there is no case precedent for LAFCo approval that is entirely contingent on the outcome of a series of eminent domain trials, and in which the special district reserves the right to abandon its commitments depending upon the outcome of the litigation.

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1. AB 2824, which went into effect this year, requires LAFCo to evaluate SSJID’s Application under all of the many “change of organization or reorganization” statutes already contained in the law. Gov’t Code §56021(h). And §56824.14(a) now prohibits LAFCo from approving SSJID’s Application without making specific findings that SSJID will have sufficient revenues to provide retail electric service. As the Senate committee put it, “AB 2824 requires LAFCo to ask the tough question: who’s going to pay? Unless the district can point to revenues from special taxes, benefit assessments, or fees, the bill requires LAFCo to say ‘no’” Senate Local Government Committee Report, December 18, 2008 p. 3
 2. The Application states at p. 1-7: “However, if after a favorable decision from LAFCo, but before SSJID purchases the retail distribution system from PG&E, changes in the market should undermine the projected savings to customers, SSJID retains the option to not implement its plan. In such an unlikely event, PG&E would continue to provide service to its existing customers.”

Too Much Information Still Is Missing For The Board To Make A Rational Decision About Submitting The Application

The proposed Application contains insufficient information to serve as the basis for approval of a Resolution of Application. Its premise—that SSJID can acquire and run PG&E’s distribution facilities and conduct all the associated tasks of a retail electric provider, including purchasing enough power to meet load at all times, and provide that service at least 15% cheaper than PG&E does—depends on the accuracy of numerous facts and projections and agreements which are nowhere disclosed, let alone proven, in the record. For example:

- No Appraisal. The proposed Application assumes that PG&E’s facilities can be acquired for \$61 million, but does not disclose the appraisal from which that number derives.
- No Construction Costs. The propose Application acknowledges substantial construction work will be necessary to sever the acquired assets from PG&E’s remaining distribution system, to reconnect the remaining system, and to connect the system within the District. The Application acknowledges that this work would include building an entirely new substation, reconstructing at least two others, building miles of new lines, replacing hundreds of existing poles, and hanging new lines under existing ones. The proposed Application, however nowhere discloses the cost of this construction work nor how SSJID derived the cost.
- No MID Agreements. The proposed Application assumes that SSJID can resolve some of the difficult severance issues that the plan would create through construction and service agreements with Modesto Irrigation, but the Application discloses no such agreements. Since agreements between public agencies are a matter of public record subject to public hearing and disclosure, and in that there have been no such public hearings or disclosures, we believe no such agreements actually exist. If such agreements exist, we request their

disclosure. If they do no, we submit that the proposed Application's reliance on nonexistent agreements is inappropriate.

- **No Boundary Plans.** The proposed Application does not disclose the location of SSJID's actual boundaries in places where electric lines lie along and across roads at the District's edge, such as French Camp and River Road. Since the plan that the Application describes is for SSJID's electric service to remain strictly within the district boundaries, the precise locations of those boundaries (i.e., whether in the middle of the paved surface, the inner edge of the paved surface, the outer edge of the paved surface, or inside or outside of the unpaved part of the right of way) will make millions of dollars of difference in the cost of severance. The Board should also release blown up copies of its plan maps sufficient for the public, including residents living along the affected roads, to see what the district's plan will actually entail for their property. Customers currently receiving looped service also need to know whether SSJID plans to relegate them to radial service if SJ LAFCo authorizes the District to proceed.
- **No Reliability Studies.** The proposed Application claims "extensive studies" show service reliability will improve under the plan, but SSJID has not released any such studies (if any exist).
- **No Supply Cost Studies.** The proposed Application assumes that SSJID can purchase sufficient power and ancillary services in 2011 for \$82/MWh, and further assumes increases of 2 percent per year thereafter, based on a study purportedly prepared by Shell Energy North America, but SSJID has not released any such study (if any exists).
- **No Labor Cost Analysis.** The proposed Application states that SSJID will have 11 employees capable of working on its electric lines, comprised of two four-person line crews and three journeymen linemen. The proposed Application does not contain any analysis of the cost, training or experience of these employees, nor whether this is sufficient staff to provide year-round round-the-clock service to 100,000 people. The same goes for the proposed application's assumption that 68 total employees can handle all aspects of retail electric service.
- **No Risks Analysis.** The proposed Application offers comfort from the possible inaccuracy of its assumptions by assuring the public that SSJID's cash reserves can cover any shortfall, but it does not acknowledge the other possible calls on those reserves or the seriousness of other risks that the District faces. Some such risks, including unfunded pension liabilities and water rights challenges, are acknowledged in the District's audited financial statements but not in the proposed Application. For the benefit of the district's constituents, the board should determine its priorities before it embarks on such a significant and wholly voluntary—new venture: will it use cash reserves to keep electric rates down, if employee pensions or water rates or water rights preservation or irrigation facilities need them? The plan itself will reduce reserves by \$10 million (for "start-up expenses"). The scenario analysis discussion concedes that an additional draw on reserves will be necessary if fair market value for PG&E's assets is higher than \$61 million. These reserve draw downs are never restored.
- **No Abandonment Analysis.** As noted above, the proposed Application implies that if SSJID concludes it will not be able to provide a 15% rate discount, it will abandon the retail electric project—but the proposed Application does not disclose how much the District expects to deplete its reserves, nor what criteria it will use to make this determination, nor whether any public input will be allowed. And if the plan is carried out the proposed Application does not state how customers can enforce the District's rate discount promise once it takes over PG&E's facilities. The last time around, the District's General Counsel acknowledged that rate promises are not enforceable. The law has not changed.
- **No Public Vote.** The proposed Application calls for SSJID to take over PG&E's retail electric business without a vote of the customers that a takeover would affect. Yet it is their money that SSJID proposes to spend, and in their name that SSJID proposes to invoke eminent domain for the takeover of a private business. We believe a vote is required, and that SSJID should be willing to put its plan before its constituents.

In light of the numerous assumptions on which SSJID has based its Application, we request that the Board release all of the reports referenced in the Application and on which SSJID's plan depends. Only after these are disclosed and examined, including the ability for the public to comment, can the Board have a rational basis to act. Until then, the Board has no basis on which to approve submission of the proposed Application. Approving a plan based on secret reports is not good government.

SSJID Has Not Complied With the California Environmental Quality Act

PG&E also objects to the district's proposed approval of the Application to SJ LAFCo because as detailed below, SSJID has not fully complied with CEQA with respect to this approval, and must consider a current and legally adequate EIR rather than relying on an outdated prior EIR.

First, it is fundamental that CEQA's statute of limitations for legal challenges to an EIR is triggered only by a notice of determination that follows an approval action. In this case, there has been no approval action for the SSJID Application, because the San Joaquin County Planning Commission only certified the 2006 EIR and adopted findings, and because the San Joaquin County LAFCo rejected the application. As noted in Continuing Education of the Bar's Practice Under the California Environmental Quality Act, at § 23.21:

A notice of determination or exemption may only be filed after the agency makes a decision to carry out or approve the project. Pub Res C §§ 21108(a), 21152(a)-(b). A notice that is filed prematurely has no legal effect and will not trigger the statute of limitations. County of Amador v El Dorado County Water Agency (1999) 76 CA4th 931, 962, 91 CR2d 66.

Accordingly, contrary to the statements in attachment 4 to the proposed Application, the time for challenging the County's certification of the EIR based on the legal adequacy of that EIR has not expired, and will not expire until there is a notice of determination following an approval action.

In addition, SSJID states that the county is preparing an addendum, which under CEQA is a document that is properly prepared when an agency is considering changes to a previously approved project. CEQA Guideline 15164. Here, however, SSJID itself admits that this Application is a "new plan" for providing retail electric service. Proposed Application, pages 1-5 to 1-6. a "new plan" is not subject to CEQA's standards which allow for preparation of an addendum. Save Our Neighborhood v. Lishmann (2006) 140 Cal. App. 4th 1288 (rejecting use of an addendum when a new project is proposed following earlier action on a similar project).

Further, although the County is by statute designated as the lead agency, and SSJID is thus acting as a responsible agency, SSJID is the agency that would carry out the proposed project if it is approved. SSJID thus has authority over the entire project, and must adopt a complete set of findings and mitigation measures for all identified impacts. Pub. Res. Code § 21002.1(d); CEQA Guideline §15096 (h).

PG&E has previously submitted extensive comments on the EIR and the deficiencies in its analysis of impacts and alternatives. Copies of these prior comments are incorporated by this reference.

Finally, regardless of the status of the 2006 EIR, the proposed Application acknowledges that the 2006 EIR needs to be amended and supplemented. But as of this writing no supplemental environmental review documentation has been disclosed. Without knowing the additional mitigation measures SSJID may have to undertake, the Board should not approve the proposed Application and thereby initiate an expensive process that may go nowhere.

In light of these circumstances, we submit that it would be an arbitrary and irrational act for the SSJID Board to pass a resolution approving submission of the proposed Application. We respectfully request that the resolution be denied.

Sincerely, George M. Soneff'

Director Kamper asked if there was anyone else who wanted to speak. No one responded. Kamper said he neglected to thank all those in attendance. He appreciated their interest in the proceedings and for showing that they cared about the outcome.

Shields was asked to respond. He thanked those who showed support and for those who don't because that is how local government works. Since there were no questions only comments, he thanked everyone for the civility in the public comments

Director Kuil made a motion to adopt Resolution 09-12-E to Apply to San Joaquin Local Agency Formation Commission to provide retail electric service.

Motion was seconded by Holbrook.

Holbrook then stated he would like to make a few comments. He first thanked everyone for coming. Holbrook said it was interesting that considering the comments made by PG&E representatives today that eminent domain is used by PG&E. He told about a farmer recently in the Delta who was paid \$1,000 for a large chunk of land that PG&E put power poles on. He said that PG&E likes to threaten. Also, he wanted it to be clear that the Stop the Power Grab group is fully funded by PG&E. Addressing the audience Mr. Holbrook said "I hope that we (the Board) do the right thing by all of you".

Director Schulz said that he has been studying this issue for over 20 years. He believes that 15% reduction is only the tip of the iceberg.

Director Kuil said that for over 100 years South San Joaquin Irrigation District has been making difficult decisions concerning dams, generation, water treatment plant, solar farm, upgrading facilities such as the Division 9 project. He said there are many pros and cons and that the Board has asked all the questions. Mr. Kuil said we have to go ahead with this.

Director Roos then spoke. He said whatever we need to do we will do to make reliable service. He said we want to negotiate with PG&E in good faith. We do not want to use eminent domain. After much study we see a benefit for the District in going ahead. The money spent has not been wasted. We feel confident that we will succeed.

Roll call Holbrook Kuil Kamper Schulz and Roos. The motion was unanimously approved to adopt Resolution # 09-12-E.

RESOLUTION NO 09-12-E

RESOLUTION OF THE SOUTH SAN JOAQUIN IRRIGATION DISTRICT TO APPLY TO LOCAL AGENCY FORMATION COMMISSION TO PROVIDE RETAIL ELECTRIC SERVICE

WHEREAS, South San Joaquin Irrigation District ("District") is authorized by Water Code section 22115 to provide for the acquisition, transmission and distribution of electric power, and

WHEREAS, the Board finds that its 100 years of experience in providing essential public services to its customers, its 50 years of experience in the generation and sale of hydroelectric power, and its hydroelectric assets, cash reserves and ongoing sources of revenues, make the District uniquely qualified to provide retail electric service within its service territory, and

WHEREAS, the Board finds that it is in the public interest to provide retail electric service in order to:

- Reduce customers' electric rates by 15 percent;
- Improve the local economy;
- Increase jobs and job opportunities in local communities;
- Improve customer service;
- Increase the reliability of service;
- Increase the availability and funding for public benefits programs;

- Entrust electric service policies and practices to locally elected officials who are directly accountable to voters in the communities the District serves;
- More equitably distribute the benefits of the District's ownership interest in the Tri-Dam Project and other low-cost hydroelectric generating facilities;
- Prudently invest the District's cash reserves where these resources can provide the greatest long-term benefit to the ratepayers and local communities the District serves, and

WHEREAS, the District may file an application with the San Joaquin Local Agency Formation Commission ("LAFCO") to provide retail electric service after adopting a resolution of application, pursuant to California Government Code sections 56653, 56654, 56700, 56824.10, 56824.12 and 56824.14, and

WHEREAS, a public hearing has been held on this date before the District's Board of Directors in order to receive oral or written testimony on the question of whether the Board should approve a resolution to file an application with LAFCO to provide retail electric service, and

WHEREAS, notice specifying the date, time and place of the public hearing concerning the adoption of this resolution has been given by mailing to each interested agency and each subject agency as required by Government Code section 56654 and by publication as required by sections 56824.12, 56153 and 56154, and

WHEREAS, the District has prepared an application to LAFCo and plan to provide retail electric service that the Board finds satisfies all of the elements required by the foregoing California Government Code statutes, and

WHEREAS, the Board finds that providing retail electric service will provide significant benefits to electric customers in its service territory,

NOW THEREFORE, BE IT RESOLVED that:

1. The District shall file an Application to LAFCO and plan to provide retail electric service, as required by California Government Code sections 56653, 56654, 56700, 56824.10, 56824.12 and 56824.14, and
2. Its General Manager is authorized to execute and deliver to LAFCO the Application and Plan of Service in the form heretofore presented to the Board and such other documents as may be necessary, to make such changes to such documents as the District's General Manager finds to be necessary, and to pay the appropriate administrative fees to file and process the applications.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately.

PASSED AND ADOPTED this 3rd day of September 2009

Meeting was adjourned to the next scheduled SSJID regular meeting to be held Tuesday, September 8, 2009 at 9:00 A.M. in the Board Room of the District's Headquarters.

Attest:

Cheryl Burke
Executive Secretary