



SMUD

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LEG 2007-0468
BOD 2007-0106
September 7, 2007

Hon. Roland Candee, Presiding Judge
Sacramento Superior Court
720 Ninth Street, Department 47
Sacramento, CA 95814

**Re: Sacramento Municipal Utility District's Response
to the 2006-07 Grand Jury Report**

Dear Judge Candee:

By this letter pursuant to California Penal Code section 933.05, I am providing the official response of the Board of Directors of the Sacramento Municipal Utility District ("District" or "SMUD") to the portion of the 2006-07 Sacramento County Grand Jury Report ("Grand Jury Report") entitled, "Rancho Seco Nuclear Power Plant: Maintenance/Disposal of Radioactive Waste and Used Nuclear Fuel." (Grand Jury Report, pp. 47-49.)

Finding 1. While expenses for dealing with waste types "A","B","C" and "GTCC" are fully funded through 2028, the storage of used nuclear fuel, costing about \$4.5 million per year, is not funded beyond 2008.

Response to Finding 1. The District agrees with this Finding, and provides the following additional information to clarify and provide context. The Finding and Issue Investigation (at 4th full paragraph on page 48) is correct that the Rancho Seco Decommissioning Trust Fund does not fund the cost of used nuclear fuel storage after the year 2008. However, on December 4, 2006, the U. S. Court of Claims issued final judgment ruling that the U. S. Department of Energy ("DOE") is responsible under contract with the District either to remove the spent fuel from the District's site or to pay damages for the long term costs of storage on site. (SMUD v. United States, U. S. Court of Claims, Case No. 98-CV-488, Final Judgment of Judge Susan Braden, December 4, 2006). In the unlikely event that the Court of Claims' judgment is reversed on appeal, the District would treat the cost of storage as an operation and maintenance ("O&M") expense and it would be covered by revenues collected through its customer rates and sales of surplus wholesale power and natural gas. In such a worst case, the \$4.5 million cost of storage would still be a significant reduction from the \$27.0 million

Board of Directors

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currently collected from customers to fund decommissioning and would not compromise SMUD's total annual budget of \$1.4 billion.¹

Recommendation 1. SMUD should identify funding sources for appropriately dealing with storage of used nuclear fuel through at least 2028.

Response to Recommendation 1. SMUD concurs. As referenced above, the primary funding source for storage of used or spent nuclear fuel is from DOE, pursuant to the Final Judgment of the Court of Claims. In the unlikely event that the Court of Claims is reversed on appeal, the District's back-up funding source would be treated as an O&M expense and would be covered by the District's revenues. Because it is unlikely that SMUD will have to pay the storage costs and the relative scale of those costs (\$4.5 million per year) compared to the District's 2007 budget of \$1.4 billion), there is no need to set aside such O&M funds in advance.

Finding 2. It is not certain which entity (SMUD or DOE) is responsible for the cost of storing "GTCC" waste and used nuclear fuel rods until they can be removed to a permanent storage facility. SMUD contends, but DOE disagrees, that it is the responsibility of DOE.

Response to Finding 2. The District partially agrees with the finding, but provides the following additional information. The District agrees that at the time of the Grand Jury investigation, it was not certain who was responsible for the cost of "GTCC" storage. However, the aforementioned Final Judgment of the Court of Claims affirmed SMUD's position that DOE is responsible for the cost of storing the used nuclear fuel rods, due to DOE's failure to start accepting used nuclear fuel in 1998 pursuant to the "Standard Contract" that it entered into with each nuclear utility, including SMUD. Conversely, the Court of Claims ruled that the District is responsible for the cost of storing the one canister containing GTCC waste. Because the District was pleased with the overall effect of the Court of Claims judgment related to spent nuclear fuel, the District did not appeal the portion of the decision related to GTCC. The GTCC, in one sealed canister, is stored in the nuclear fuel storage facility along with 21 fuel canisters. The incremental cost to store the "GTCC" in addition to storing the fuel is at most much less than 1/22 of the annual estimated operating cost or less than \$210,000 per year.

¹ The District's 2007 budget is \$1,360,149,000, which includes \$911,391,000 for O&M, \$176,781,000 for debt service, and \$271,976,000 for capital expenditures, reserves and net loans. The District's total revenue for 2006 was \$1,386,526,000 (SMUD 2006 annual Report).

Recommendation 2. In the event that SMUD may ultimately be held responsible for storage of the used nuclear fuel rods, SMUD should develop contingency plans with sufficient funding to meet that obligation.

Response to Recommendation 2. The District partially concurs. As noted in our response to Finding 1 and Recommendation 1 above, in the unlikely event that the Court of Claims' judgment is reversed on appeal, the District would treat the cost of storage as an O&M expense and it would be covered by revenues collected through its customer rates and sales of surplus wholesale power and natural gas. In such a worst case, the \$4.5 million cost of storage would not compromise SMUD's total budget of \$1.4 billion (fiscal year 2007).

Finding 3. The Yucca Mountain, Nevada, nuclear waste storage facility may never be opened.

Response to Finding 3. The District agrees.

Recommendation 3. SMUD should develop a plan that includes possible funding sources which will provide for the permanent storage of the Rancho Seco used nuclear fuel.

Response to Recommendation 3. The District partially concurs. SMUD concurs that there needs to be a plan to fund permanent storage of the used nuclear fuel at Rancho Seco. However, as explained above, SMUD believes that the plan it has in place, as outlined in the response to Findings 1 and 2, is sufficient to address all possible contingencies.

First, SMUD's primary plan, as required by the Nuclear Waste Policy Act of 1982 and the Standard Contract between DOE and all nuclear utilities including SMUD, DOE is responsible for permanent disposal of used nuclear fuel, whether at Yucca Mountain or some other location. Specifically, DOE was required to start taking the spent fuel in 1998.

Second, when DOE breached its duty to start taking fuel in 1998, SMUD and numerous other utilities filed suit in federal court. SMUD successfully obtained a Court order in December 2006, ruling that DOE is responsible for the cost to store used nuclear fuel at Rancho Seco. Even if Yucca Mountain never opens, DOE remains responsible under federal law, under contract with SMUD and other utilities, and under federal court order, to use the Nuclear Waste Fund (funded by the nuclear utilities through a 1 mil (tenth of a cent) per kilowatt-hour nuclear generation fee) to provide a means of permanent

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disposal of spent nuclear fuel, including both transport and storage costs. SMUD paid DOE about \$40 million in such nuclear generation fees before Rancho Seco closed in 1989.

Third and finally, in the unlikely event that the Court of Claims' judgment is reversed on appeal, the District would treat the cost of storage as an O&M expense and it would be covered by revenues collected through its customer rates and sales of surplus wholesale energy and natural gas. In such a worst case, the \$4.5 million cost of storage would not jeopardize SMUD's total budget of \$1.4 billion (fiscal year 2007).

Thank you for this opportunity to respond to the Grand Jury Report. If you have any other questions about this letter, please contact SMUD's Chief Assistant General Counsel, Steven M. Cohn, at 916-732-6121.

Sincerely,



Susan Patterson, President
SMUD Board of Directors

/dm

cc: Dave Irish, CPA, Sacramento County Director of Finance
Becky Castaneda, Grand Jury Coordinator
Corporate Files