

INQUIRY INTO MOSS LANDING INFRASTRUCTURE FUND



INQUIRY INTO MOSS LANDING INFRASTRUCTURE FUND

SUMMARY/BACKGROUND

In August and September 2014, the Monterey County Civil Grand Jury (MCCGJ) performed an inquiry into the Moss Landing Infrastructure Fund, focusing on the 2001 Agreement between Moss Landing Chamber of Commerce (the Chamber) and Duke Energy Moss Landing, LLC (Duke Energy).¹ The Agreement stipulated that Duke Energy would pay \$3.4 million in installments over 30 years into the Moss Landing Infrastructure Fund to cover utility upgrades and other improvement projects in the community of Moss Landing. Since 2002 local activists and media have continued to question three issues:

- The money that should be in the Fund;
- The assignment of the Fund's management by the Moss Landing Chamber of Commerce to Monterey County Public Works Department, and the question of whether the Department is providing adequate oversight of the Fund and the projects; and
- The fact that despite assurances from the Public Works Department, none of the projects have been completed to date

The MCCGJ determined that the Chamber acted within its rights in assigning the management of the Fund to the Public Works Department, that the Department is exercising appropriate oversight of the funds and the projects involved, and that the money is being received and allocated in a reasonable sequence. However, this information is not being effectively communicated to the public.

INVESTIGATIVE METHODOLOGY

Members of the MCCGJ interviewed officials of the Monterey County Public Works Department. Members also reviewed published County information and various historic documents, including:

- The March 23, 2001 Agreement between the Chamber and Duke Energy
- The August 24, 2004 Amendment to the 2001 Agreement
- The 2002 Moss Landing Fund Assignment to Monterey County
- Monterey County Resource Management Agency (RMA) Documents
- The current RMA Public Works Active Capital Project List by Fund
- The July 24, 2014 Moss Landing Community Meeting Report, Plans and Schematics

¹ The 2001 Agreement was part of Duke Energy's negotiations with local environmentalists concerned about the environmental impact of the proposed expansion of the Moss Landing Power Plant. Settlement included payments to Monterey Bay nonprofit, conservation and environmental groups as well as the infrastructure improvement agreement with Moss Landing.

DISCUSSION

The 2001 Agreement called for Duke Energy to pay \$3,410,000 in annual payments over 30 years for placing power, cable and phone lines underground and implementing the County's storm water run-off plan for Moss Landing and Sandholdt Roads, and/or installing street lights on Moss Landing and Sandholdt Roads. In 2004, the Agreement was modified (with no increase in funds) to include underground utilities for four additional streets: Pieri Court, Allen Street, Portrero Road, and Laguna Place.

On September 24, 2002, the Chamber relinquished control of the Fund and its oversight to the Monterey County Public Works Department. By 2015, Duke Energy and its successor, Dynegy, which purchased the power plant in 2006, had paid a total of \$2.05 million of the \$3.4 million agreed on into the Infrastructure Fund. The Public Works Department continues to provide oversight and management of the Fund and the projects outlined in the two Agreements as follows:

In overseeing the use of the Dynegy funds, the Public Works Department is obliged by reason of California Public Utilities Commission (PUC) Rules covering the undergrounding of utilities to split the use of the funds into two categories: Rule 20A funds and Rule 20B funds.

- Projects qualifying for PG&E surcharges to cover the actual cost of undergrounding the utilities are in the "Rule 20A funds" category. The project to underground utilities on Moss Landing and Sandholdt Roads is in this category and qualifies for these funds.
- Projects not qualifying for PG&E surcharges to cover the actual cost of undergrounding the utilities are in the "Rule 20B funds" category. The project to underground utilities on Pieri Court, Allen Street, Portrero Road, and Laguna Place is in this category and does not qualify for these funds.
- The installation of storm drains along Moss Landing Road and related work to enhance storm water runoff is entirely outside the jurisdiction of the PUC.

Within the costing process for these areas of activity, the Public Works Department must separate the project design, expense of permits, environmental reviews, and the acquisition of easements, rights of entry or rights of way (all considered part of the "design process") from the cost of the actual undergrounding or storm drain work. This is necessary because in the case of Rule 20A work, PG&E surcharge funds may not be used for activities that are part of the "design process."

By March 2015, the Public Works Department had spent approximately \$802,400 of the \$2.05 million on the project design process, as described below. After these expenditures, the Fund had approximately \$1.25 million remaining as of March 2015. An additional \$1,360,000 will be paid through annual installments by 2031.

- **Underground Utilities on Moss Landing and Sandholdt Roads: Project cost = \$3.6 million. Project design is approximately 95% complete.** Under Rule 20A, utility surcharges from PG&E funded \$3.1 million. Project design costs – approximately \$463K – are being paid by Dynegy funds. The project had been delayed because of the unexpected level of permitting required. As of February 2015 the Monterey County Zoning Administrator has approved the California Environmental Quality Act (CEQA) Mitigated Negative Declaration, as well as the Combined Development Permit. This has allowed the Public Works Department to move forward with obtaining easements for the trenching

and transformer pads needed to underground the power lines. Over half of these easements are finished. PG&E and AT&T are moving ahead with obtaining bids to complete the construction of the project once all the remaining easements have been approved and recorded.

- **Underground utilities on Pieri Court, Allen Street, Portrero Road, and Laguna Place: Project cost = \$1.6 million. Project design is almost 100% complete and ready for bid.** These residential development streets are not eligible for 20A funds, so the project is on hold, waiting for additional annual funds from Dynegy to move forward. Most of the design work has been paid by Dynegy funds. The Monterey County Board of Supervisors has not budgeted any of the remaining funds toward the completion of this project.
- **The Moss Landing storm drain project (installation of storm drains along Moss Landing Road and reconstruction of the road to provide adequate drainage for runoff): Project Cost = \$3.4 million. Project design is approximately 30% complete.** Most of the design work completed to date has been paid by Dynegy funds. The project is on hold for lack of funds; however it was felt that completing the design to this level would increase chances for receiving grant funding.

FINDINGS

- F1. The total \$3.4 million funding agreed on is not sufficient to fully fund the projects listed in the Agreement. It is the conclusion of the MCCGJ that it was never sufficient for the scope of the planned projects.
- F2. Because Moss Landing is not an incorporated city, the Chamber acted properly to make an agreement with Monterey County to manage the funds and the projects. The August 24, 2004 Amendment to the 2001 Agreement with Duke Energy expressly acknowledges this reassignment of management oversight.
- F3. The County appears to have been responsible stewards of the funds and has been pursuing the necessary designs, permits, easements and rights of way.
- F4. The County has completed a portion of the design for the storm drain project in order that the project may be potentially competitive in seeking grant funding.
- F1. The RMA-Public Works Department website (www.co.monterey.ca.us/publicworks/) contains FAQs about the Moss Landing Improvement Projects but the page can be found only by using the “search” bar or a search engine, and it may be lacking the most current information.

RECOMMENDATIONS

- R1. Monterey County seek grants and other outside sources of funding for the projects that are on hold due to lack of funding

- R2.** The Public Works Department ensure that its website is an accurate source of information for the public about these Moss Landing projects by maintaining updated project information and financial data
- R3.** The Public Works Department add a category to the FAQ or Special Announcements pages to improve accessibility to information about these projects

RESPONSES REQUIRED

Pursuant to Penal Code Section 933.05, the MCCGJ requests Responses to all Findings and Recommendations as follows:

- Monterey County Board of Supervisors