



# Council Agenda Report

**From:** Thomas Frutchey, City Manager  
**Subject:** Diablo Canyon Power Plant Agreement  
**Date:** December 20, 2016

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## Facts

1. The Diablo Canyon Power Plant (DCPP) opened in 1985. Since the shutdown of San Onofre in 2013, DCPP has been the only nuclear plant operational in California, supplying 8.6% of the electricity consumed in the state.
2. The DCPP has had a positive economic impact on San Luis Obispo County; according to a 2013 study by Cal Poly, Diablo Canyon annually contributes \$920 million to the Central Coast economy. This includes jobs, contracts for services, and extensive taxes. Diablo Canyon is the largest creator of jobs in the San Luis Obispo area. More than 1,500 employees work at Diablo Canyon; residents and businesses throughout the County depend on DCPP for business. Altogether, Diablo generates roughly 2,500 permanent jobs for the region, and up to 5,000 additional temporary contract jobs each year. The total value of the 900-acre DCPP property is approximately \$2 billion.
3. On June 21, 2016 Pacific Gas & Electric (PG&E) announced that it will close DCPP when the current operating licenses from the Nuclear Regulatory Commission (NRC) expire in 2024 and 2025. The announcement also stated that a Joint Proposal (JP) for the closure had been reached with labor and environmental groups, but required final approval by the California Public Utilities Commission (CPUC) and was contingent on the extension of current leases with the State Lands Commission (SLC), for the ocean intake and outfall structures.
4. Closure of the DCPP is likely to have a number of significant negative consequences on the businesses, residents, and governments within the County of San Luis Obispo. These include safety, environmental concerns, disaster preparedness and emergency response, and both near- and long-term economic development.
5. On June 28, the SLC unanimously approved the extension of the leases. The CPUC initiated its review process in September, anticipated to be completed by the end of 2017, although PG&E has requested an expedited process as part of its application.
6. The City joined with other cities and the County to negotiate with PG&E. The primary goals pursued in the joint city/County efforts, in order to have the potentially greatest impact on Paso Robles, included:

**Fostering creative solutions that will lessen the short and long term economic, fiscal and environmental impacts to the community.** Options here included a longer runway on tax offsets to ease the transition, direct funding for programs impacted by the loss of tax revenue, and other direct financial contributions.

**Addressing the issue of fair and equitable cost sharing between ratepayers and PG&E corporate assets and shareholders as warranted.** The JP assumes that ratepayers will pay the majority of the costs associated with closure; the shareholders would have little financial responsibility. These additional costs would translate into increased rates, to be considered by the CPUC in the current and future rate cases.

**Investigating opportunities for job creation and economic diversification.** Examples of this could include creation of a research and development facility located in the region, alternative energy generation technologies, infrastructure development, job training programs, and seed funding for relevant economic programs and opportunities. These opportunities could involve, among others, direct funding and/or commitments for a certain number of jobs remaining in the community for a specified amount of time, and local vendor preference for request for offers (RFO) for new energy sources.

In closed session on November 1, the Council provided the negotiating parameters and directed the City Manager, as the City's lead negotiator, to pursue an agreement fully consistent with those parameters. The negotiations were completed in late November resulting in an agreement (Attachment 1).

### **Options**

1. Take no action;
2. Affirm the agreement as negotiated.

### **Analysis and Conclusions**

The negotiated agreement is fully consistent with the parameters provided to the City Manager. Although the coalition of cities and the county did not achieve all of the negotiating goals, the final agreement establishes results that were not able to be achieved by any other community facing the shutdown of a nuclear power plant.

As has been true throughout the entire process, it is important that the City provide all possible opportunities for the public to understand the benefits and challenges of the negotiated solution and the needed actions going forward. It is also important to start the discussion of economic recovery and possible uses of the funds as early as possible. Later on this Council agenda, there is a proposal from the Chamber of Commerce to become the City's lead agency for many of the economic development and recovery tasks being necessitated or intensified by the closure of DCP. Finally, the City Council directed the City Manager to be the City's representative on the Coalition of Cities negotiating team on behalf of the City, and authorized to sign the agreement on behalf of the City, it is crucial that the Council is recognized, both now and throughout the closure process, as providing the leadership on this action, on behalf of the community.

### **Fiscal Impact**

Upon full acceptance of the JP and settlement agreement by the CPUC, and resolution of any appeals, the City will receive \$1,145,631 from PG&E, for use exclusively in economic development and recovery efforts. The City will provide a report to PG&E and the CPUC within 18 months of the receipt of funds, detailing the uses of the funds, with annual reports due thereafter until all funds are expended.

Upon the completion of the economic impact study called for by legislation sponsored by Senator Bill Monning, the coalition of cities has the opportunity to initiate a new action with the CPUC, to address any unanticipated results.

### **Recommendation**

Affirm the agreement negotiated by the Coalition of Cities and the County with PG&E, addressing the economic impacts of the closure of the Diablo Canyon Power Plant and agreeing to a series of mitigations designed to minimizing those impacts in Paso Robles.

### **Attachments**

1. Executed Settlement Agreement

**Confidential Legal Materials, Subject To Joint Defense Privilege, Attorney-Client Privilege and  
Attorney Work Product**

**JOINT DEFENSE, COOPERATION, AND COMMON INTEREST AGREEMENT**

This document is a Joint Defense, Cooperation and Common Interest Agreement (“Agreement”) entered into by and between the City of San Luis Obispo, the City of Arroyo Grande, the City of Atascadero, the City of Morro Bay, the City of Paso Robles, the City of Pismo Beach and the County of San Luis Obispo (together the “Parties” and individually the “Party”) for the purpose of furthering the Parties’ common interests in connection with proceedings before the California Public Utilities Commission (the “CPUC”) and other bodies concerning Pacific Gas and Electric Company’s (“PG&E”) efforts to close Diablo Canyon Nuclear Power Plant (“Diablo Canyon”), including, but not limited to, the proceedings related to the “Application of Pacific Gas & Electric Company for Approval of the Retirement of Diablo Canyon Power Plant, Implementation of the Joint Proposal, and Recovery of Associated Costs Through Proposed Ratemaking Mechanisms” (Application 16-08-006) (the “Joint Proposal”), and the “Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Increase Rates and Changes for the Electric and Gas Services Effective on January 1, 2017. (U39G)” (Application 15-09-001) (the “Rate Application”).

**WITNESSETH**

WHEREAS, the CPUC is conducting various proceedings related to the closure of Diablo Canyon (the “Proceedings”), including, in proceeding A.16-08-006 the Joint Proposal, and in proceeding A.15-09-001, the Rate Application; and

**JOINT DEFENSE, COOPERATION, AND COMMON INTEREST AGREEMENT**

WHEREAS, the Parties have mutual interests relating to economic impact, future use of the land, maintenance of nuclear waste and other forms of damages and costs related to the closure of Diablo Canyon; and

WHEREAS, the Proceedings generally involve legal issues that are mutually important to the Parties, thus creating a commonality of interest between them; and

WHEREAS, cooperation between the Parties is often not only in the best interest of the Parties, but also serves to reduce unnecessary duplication of efforts and expedites evidentiary hearing and trial preparation, if any, and consideration by the CPUC and courts of any evidence, memoranda and pleadings, if any, filed by the Parties; and

WHEREAS, the Parties have shared, and will continue to share, confidential information relating to legal issues, expert testimony, strategy, and pleadings, and in furtherance of their common legal interests, in connection with the Proceedings (“Common Interest Information”); and

WHEREAS, the Parties wish to preserve, to the maximum extent possible, any applicable privilege or protection (including, but not limited to, the attorney-client privilege and the work product doctrine) that they may have specifically relating to all Common Interest Information, and to provide a means of sharing such information between the Parties, their representatives, experts, and counsel.

NOW THEREFORE, in consideration of the promises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is individually acknowledged by each of the undersigned, the undersigned agree as follows:

1. All Common Interest Information previously shared or shared in the future between the Parties and their counsels, and any and all information derived from any Common Interest Information, shall be deemed subject to the terms of this Agreement. All Common Interest

## **JOINT DEFENSE, COOPERATION, AND COMMON INTEREST AGREEMENT**

Information which is privileged or protected as to any Party shall remain privileged or protected when communicated to any other Party and/or any of their experts and/or counsels to the maximum extent permitted by law.

2. The Parties shall receive and hold in confidence any Common Interest Information disclosed to them by any other Party, and take all steps reasonably necessary to maintain the privileged and confidential nature of such Common Interest Information. If a Party receives a request, whether by legal process, or otherwise, from any person or entity not a party to this Agreement seeking production or discovery of any Common Interest Information, then the Party receiving such request, or its counsel: (1) shall immediately notify all other Parties; (2) shall assert the joint defense privileges established by this Agreement and take all reasonable steps to enforce such privileges and prevent disclosure of the requested Common Interest Information; and (3) shall notify the Party that created the Common Interest Information and give that Party the opportunity to protect its interests by such actions as it believes appropriate. If production occurs pursuant to court order, legal mandate, or consent of the Parties then the disclosed information will no longer be deemed Common Interest Information.

3. Subject to the provisions of this Agreement, the obligations of confidentiality and nondisclosure of the Common Interest Information shall be continuous and non-terminating, except by consent of the Parties and shall survive: (1) the termination or conclusion, in whole or in part, of any litigation or of any claim, action or dispute arising out of the actions before the CPUC or other bodies; (2) the development or assertion of any adverse legal position(s) as between the Parties; and (3) any termination or withdrawal by a Party from this Agreement.

4. A Party may voluntarily choose to share with any other Party such Common Interest Information as the Party deems appropriate and consistent with law, but this Agreement creates no

#### **JOINT DEFENSE, COOPERATION, AND COMMON INTEREST AGREEMENT**

obligation or duty to share any such Common Interest Information. Nothing in this Agreement shall limit the rights of any Party to use or disclose to third parties any document or information so long as such use or disclosure does not involve disclosure of Common Interest Information.

5. No Party shall have authority to waive any applicable privilege or protection on behalf of another Party; and any waiver of an applicable privilege or protection by one Party shall not be deemed to be a waiver as to another Party.

6. Nothing contained in or contemplated by this Agreement shall be deemed to create an attorney-client or fiduciary relationship between any attorney (or firm) and anyone other than the client of that attorney (or firm). No Party to this Agreement shall seek to use any attorney's (or firm's) participation in this Agreement as the basis for seeking to disqualify or otherwise prevent that attorney or firm from representing any client.

7. Except as set forth in this paragraph no Party shall disclose any Common Interest Information to anyone except the Parties to this Agreement, and any persons employed or retained by such Parties performing work related to the Proceedings; provided, that such persons have agreed in advance to be bound by the terms of this Agreement. Except as otherwise provided in this Agreement, all Common Interest Information shared or disclosed pursuant to the terms of this Agreement shall be used by the recipients thereof solely in connection with the Proceedings and shall not be used for any other purpose whatsoever.

8. The sharing of Common Interest Information pursuant to this Agreement shall not prevent a Party from asserting any claim, at law or in equity, against any other Party in any proceeding. In any such proceeding no Party may use against any other Party (or additional parties to that proceeding) any Common Interest Information received from any other Party or jointly developed by or on behalf of the Parties to this Agreement. For the avoidance of doubt, in any

#### **JOINT DEFENSE, COOPERATION, AND COMMON INTEREST AGREEMENT**

such proceeding, any Party may use any information received or obtained after the termination of this Agreement as to such Party through discovery or otherwise as well as information obtained from a source other than any other Party, notwithstanding the same information was, theretofore, received from any other Party in connection with (or subject to) the common interest privilege.

9. A Party may withdraw from this Agreement upon ten-days' written notification, served by facsimile, email, or hand delivery upon the undersigned counsel for the other Parties. In the event any Party determines it has, or likely will have, a conflict of interest with the another Party, such Party shall promptly withdraw from this Agreement. Any withdrawal and resulting termination of this Agreement will be solely on a prospective basis, and this Agreement shall continue to protect all Common Interest Information disclosed by or to the withdrawing Party before its withdrawal. The Parties shall remain bound by this Agreement to keep confidential all Common Interest Information received prior to the date of any withdrawal. Except as set forth immediately below, a withdrawing party and employees and representatives shall, upon the request of any Party: (1) promptly return to the requesting Party all Common Interest Information received from the requesting Party; and (2) destroy all documents and records prepared by (and in the possession of) the withdrawing Party that contain, reflect or reveal any such Common Interest Information received from another Party or delete such information from its documents or records.

10. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, without reference to principles of choice or conflict of laws. Each Party hereby irrevocably consents to the exclusive jurisdiction and venue of the Superior Court of the County of San Luis Obispo, California, and/or the United States District Court for the Central District of California in connection with any dispute hereunder or the enforcement of any right or obligation hereunder.

#### **JOINT DEFENSE, COOPERATION, AND COMMON INTEREST AGREEMENT**

11. The provisions of this Agreement may only be modified by written agreement.

12. In the event any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not be affected or impaired thereby.

13. This Agreement is not intended to, and shall not, create rights for, or impose any obligations on, any person or entity not a Party hereto, except to the extent provided herein.

14. This Agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed to be an original and shall be binding on the Party who, through its counsel, signed the counterpart, all of which together shall constitute a single agreement.

15. This Agreement constitutes the complete agreement of the Parties with respect to the subject matter hereto, and memorializes and supersedes any prior or written agreements and applies to all prior and future communications and exchanges of Common Interest Information.

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City of San Luis Obispo

Dated: \_\_\_\_\_

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City of Arroyo Grande

Dated: \_\_\_\_\_

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City of Paso Robles

Dated: \_\_\_\_\_

## **JOINT DEFENSE, COOPERATION, AND COMMON INTEREST AGREEMENT**

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City of Atascadero

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City of Morro Bay

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City of Pismo Beach

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County of San Luis Obispo

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City of San Luis Obispo

Dated: 9/26/2014

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City of Arroyo Grande

Dated: \_\_\_\_\_

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City of Paso Robles

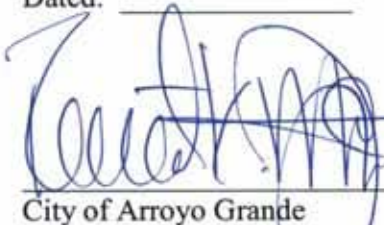
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City of San Luis Obispo

Dated: \_\_\_\_\_

  
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City of Arroyo Grande

Dated: 9.28.2016

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City of Paso Robles

Dated: \_\_\_\_\_

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City of San Luis Obispo

Dated: \_\_\_\_\_

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City of Arroyo Grande

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City of Paso Robles

Dated: 9-27-16

#### **JOINT DEFENSE, COOPERATION, AND COMMON INTEREST AGREEMENT**



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City of Atascadero

Dated: 9.29.16

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City of Morro Bay

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City of Pismo Beach

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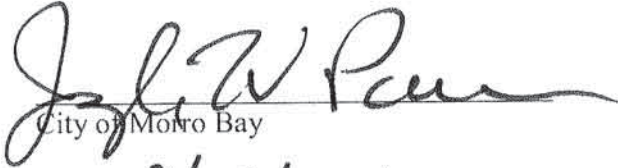
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**JOINT DEFENSE, COOPERATION, AND COMMON INTEREST AGREEMENT**

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City of Atascadero

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City of Morro Bay

Dated: 9/26/2016

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City of Pismo Beach

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County of San Luis Obispo

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## **JOINT DEFENSE, COOPERATION, AND COMMON INTEREST AGREEMENT**

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City of Atascadero

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City of Pismo Beach

Dated: 1-26-16

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**JOINT DEFENSE, COOPERATION, AND COMMON INTEREST AGREEMENT**

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City of Atascadero

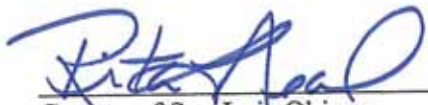
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City of Morro Bay

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City of Pismo Beach

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County of San Luis Obispo

Dated: 9/30/2016

**JOINT DEFENSE, COOPERATION, AND COMMON INTEREST AGREEMENT**

Draft Settlement Agreement Appendix 2 Attachment A  
Distribution of Economic Development Fund  
County of San Luis Obispo/Coalition of Cities


Total Amount	County (40%)	Coalition Share (60%)	Regional Economic Development	Arroyo Grande	Atascadero	Morro Bay	Paso Robles	Pismo Beach	San Luis Obispo
\$10,000,000	\$3,840,000*	\$5,760,000	\$400,000**	\$747,422	\$783,106	\$497,472	\$1,145,631	\$767,028	\$1,819,341

**\*The County will allocate \$192,000 of this amount to the City of Grover Beach.**

**\*\* To be distributed to the County for Regional Economic Development.**