



651 Commerce Drive
Roseville, CA 95678

phone (916) 781-3636
fax (916) 783-7693
web www.ncpa.com

Agenda – Legal Committee Meeting

Meeting Date: November 2, 2023 Legal Committee Meeting

Location: Meeting held at NCPA Headquarters and via Teleconference Posted Locations

Time: 8:30 a.m. PT

In compliance with the Brown Act, you may participate in person at the meeting location or via teleconference at one of the locations listed below. In either case, please (1) post the Agenda at a publicly accessible location at the participation location at least 72-hours before the meeting begins, and (2) have a speaker phone available for any member of the public who may wish to attend at your location.

<p>Northern California Power Agency 651 Commerce Drive Roseville, CA 95678</p>	<p>City of Alameda Alameda City Attorney's Office 2263 Santa Clara Avenue, No. 280 Alameda, CA 94501</p>	<p>San Francisco Bay Area Rapid Transit District 2150 Webster Street, 1st Floor, Room 161 Oakland, CA 94612</p>
<p>City of Biggs Law Office of Gregory P. Einhorn 542 Quail Walk Way Rio Vista, CA 94571</p>	<p>City of Alameda 18217 Carmel Drive Castro Valley, CA 94546</p>	<p>City of Gridley Rich, Fuidge, Bordsen & Galyean 1129 D Street Marysville, CA 95901</p>
<p>City of Lodi 221 West Pine Street Lodi, CA 95240</p>	<p>City of Healdsburg Burke Williams & Sorenson 688 Roble Avenue Menlo Park, CA 94025</p>	<p>Plumas-Sierra Rural Electric Coop Somach, Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814</p>
<p>City of Lompoc Aleshire & Wynder, LLP 6001 Boeing Place Los Angeles, CA 90045</p>	<p>City of Palo Alto Office of the City Attorney Office 250 Hamilton Avenue Palo Alto, CA 94301</p>	<p>Port of Oakland Office of General Counsel 530 Water Street Oakland, CA 94607</p>
<p>City of Redding Office of the City Attorney 777 Cypress Avenue Redding, CA 96001</p>	<p>City of Palo Alto Assistant City Attorney Office 54 Bosworth Field Mendon, NY 14506</p>	<p>City of Santa Clara 881 Martin Avenue Santa Clara, CA 95050</p>
<p>City of Roseville Civic Center-City Attorney's Office 311 Vernon Street Roseville, CA 95678</p>	<p>City of Shasta Lake [No teleconference location]</p>	<p>Truckee Donner PUD [No teleconference location]</p>
<p>City of Ukiah Rapport and Marston 405 West Perkins Street Ukiah, CA 95482</p>	<p>City of Alameda 10572 Avenida Magnifica San Diego, CA 92131</p>	

Persons requiring accommodations in accordance with the Americans with Disabilities Act in order to attend or participate in this meeting are requested to contact the NCPA Secretary at 916-781-3636 in advance of the meeting to arrange for such accommodations.

The Committee may act on any of the items listed on this Agenda regardless of whether an item is described as an Action item, a Report, or an Informational or Discussion item. This Agenda may be supplemented by Staff Reports which are available to the public upon request. Pursuant to California Government Code Section 54957.5, the following is the location at which the public can view Agendas and other public writings: NCPA Offices, 651 Commerce Drive, Roseville, California, or www.ncpa.com.

- **Review Safety Procedures – NCPA Headquarters Facility**

- 1. CALL MEETING TO ORDER AND ROLL CALL**

- 2. PUBLIC COMMENT**

Any member of the public who desires to address the NCPA Legal Committee on any item considered by the Legal Committee at this meeting, before or during the Committee's consideration of that item, shall so advise the Chair and shall thereupon be given an opportunity to do so. Any member of the public who desires to address the NCPA Legal Committee on any item within the jurisdiction of the Legal Committee and not listed on the Agenda may do so at this time.

- 3. MEETING MINUTES** - Seeking approval of the minutes of the Legal Committee meeting held on September 7, 2023, and meeting held on October 4, 2023 (*Action Item*)

CLOSED SESSION

- 4. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Pursuant to Government Code Section 54956.9(d)(1) - Existing Litigation:

A. Case Name: *City of Santa Clara dba Silicon Valley Power and Northern California Power Agency, Plaintiffs, v. California Department of Water Resources, Defendant*, Sacramento County Superior Court, Case No. 34-2023-00338449

B. FERC Dockets: Rate Cases:

FERC TO18:

- *Pacific Gas and Electric Co.*, Federal Energy Regulatory Commission, Docket No. ER16-2320
- *Pacific Gas and Electric Co.*, Federal Energy Regulatory Commission, Docket No. EL18-108

FERC TO19:

- *Pacific Gas and Electric Co.*, Federal Energy Regulatory Commission, Docket No. ER17-2154
- *California Public Utilities Commission, et al. v. Pacific Gas and Electric Co.*, Federal Energy Regulatory Commission, Docket No. EL17-95

FERC TO20:

- *Pacific Gas and Electric Co.*, Federal Energy Regulatory Commission, Docket No. ER19-13
- *Pacific Gas and Electric Co.*, Federal Energy Regulatory Commission, Docket No. ER19-1816
- *Pacific Gas and Electric Co.*, Federal Energy Regulatory Commission, Docket No. ER20-2265

D.C. Circuit:

- *Pacific Gas and Electric Co. v. Federal Energy Regulatory Commission*, D.C. Circuit Case No. 21-1061 (lead), consolidated with Case Nos. 21-1135, 21-1172, 21-1204, 22-1095, 22-1113.

5. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Pursuant to Government Code Section 54956.9(d)(2) – Anticipated Litigation, one (1) case.

OPEN SESSION

6. REPORT FROM CLOSED SESSION

7. SECOND PHASE AGREEMENT–COMBUSTION TURBINE 2 REPLACEMENT PROJECT –

Discuss Second Phase Agreement moving forward for the CT2 Repower Project.

(Information/Discussion Item)

8. NCPA PROGRAM TO ADDRESS WHEELING ACCESS CHARGES–TRANSMISSION OWNER RATE CASES –

Discuss the development of Transmission Rate Case Program.

(Information/Discussion Item)

9. GENERAL COUNSEL UPDATES - NCPA’s General Counsel will update the Committee on miscellaneous business matters of interest. *(Information Item)*

10. ADJOURNMENT



651 Commerce Drive
Roseville, CA 95678

phone (916) 781-3636
fax (916) 783-7693
web www.ncpa.com

NCPA Legal Committee Meeting Minutes

Date: Thursday, September 7, 2023
Time: 8:30 a.m. Pacific Standard Time
Location: 651 Commerce Drive, Roseville, CA or via teleconference
Subject: NCPA Legal Committee Meeting

1. Call Meeting to Order and Roll Call

The Legal Committee meeting was called to order at 8:35 a.m. by Vice Chair Amy Bartell. At the time of roll call, the following members were present via Zoom:

Alameda Municipal Power-Lonnie Eldridge; BART-Mary Wilke; Biggs-Gregory Einhorn; Lodi-Katie Lucchesi; Palo Alto-Amy Bartell, Port of Oakland-Rachel Sommovilla; Roseville-Joe Mandell, Santa Clara-Daniel Ballin, and Ukiah-Darcy Vaughn. A quorum was present.

Also participating in the meeting were NCPA General Manager Randy Howard, Legislative & Regulatory Assistant General Manager Jane Cirrincione, NCPA General Counsel Jane Luckhardt, and NCPA administrative support Linda Stone.

Redding-Barry DeWalt joined the meeting during the Closed Session discussion. Randy Howard departed the meeting during the Closed Session discussion.

2. Public Comment

The Vice Chair read the notification regarding Public Comment and asked if any member of the public would like to address the Committee. There was no public comment.

3. Meeting Minutes

The minutes of the Legal Committee meetings held on August 3, 2023, were presented by staff for review and approval. Joe Mandell (Roseville) made a motion to approve the minutes as presented; second by Katie Lucchesi (Lodi). There was no discussion. A roll call vote was taken, as follows. The motion passed.

Vote Summary on Motion	
Participant	Vote
Alameda Municipal Power	Yes
BART	Yes
Biggs	Yes
Gridley	Absent
Healdsburg	Absent
Lodi	Yes
Lompoc	Absent
Palo Alto	Yes
Plumas-Sierra	Absent
Port of Oakland	Yes
Redding	Absent
Roseville	Yes
Santa Clara	Yes
Shasta Lake	Absent
Truckee Donner PUD	Absent
Ukiah	Yes
Vote Summary	
Total Yes	9
Total Noes	0
Total Abstain	0
Total Absent	7
Result:	Passed

CLOSED SESSION

The Committee went into Closed Session at 8:38 a.m.

4. Conference with Legal Counsel - Existing Litigation pursuant to Government Code Section 54956.9(d)(1).

A. Case Name: *City of Santa Clara dba Silicon Valley Power and Northern California Power Agency, Plaintiffs, v. California Department of Water Resources, Defendant, Sacramento County Superior Court, Case No. 34-2023-00338449*

B. FERC Dockets: Rate Cases:

FERC TO18:

- *Pacific Gas and Electric Co.*, Federal Energy Regulatory Commission, Docket No. ER16-2320
- *Pacific Gas and Electric Co.*, Federal Energy Regulatory Commission, Docket No. EL18-108

FERC TO19:

- *Pacific Gas and Electric Co.*, Federal Energy Regulatory Commission, Docket No. ER17-2154
- *California Public Utilities Commission, et al. v. Pacific Gas and Electric Co.*, Federal Energy Regulatory Commission, Docket No. EL17-95

FERC TO20:

- *Pacific Gas and Electric Co.*, Federal Energy Regulatory Commission, Docket No. ER19-13
- *Pacific Gas and Electric Co.*, Federal Energy Regulatory Commission, Docket No. ER19-1816
- *Pacific Gas and Electric Co.*, Federal Energy Regulatory Commission, Docket No. ER20-2265

D.C. Circuit:

- *Pacific Gas and Electric Co. v. Federal Energy Regulatory Commission*, D.C. Circuit Case No. 21-1061 (lead), consolidated with Case Nos. 21-1135, 21-1172, 21-1204, 22-1095, 22-1113.

The meeting reconvened to Open Session at 8:56 a.m.

5. Report from Closed Session

Vice Chair Amy Bartell and NCPA General Counsel Jane Luckhardt advised that no reportable action was taken during Closed Session.

6. CPUC Requests for Information

Jane Luckhardt introduced this item which was requested discussion by Amy Bartell. Amy discussed requests Palo Alto has received from the California Public Utilities Commission for inspections of and detailed information regarding publicly owned utilities' substation operations and maintenance records. The committee members discussed their experiences and responses which ranged from providing everything requested, resisting on procedural defects in the Notice, declining to provide, and requesting a Non-Disclosure Agreement in order to do so. They also discussed challenges communicating with the CPUC and limitations of its website.

7. Legal Committee Meeting Dates for 2024

NCPA staff presented options for consideration for the 2024 regular meeting date schedule, including meeting quarterly, bi-monthly, or monthly. The general consensus of the discussion was that the group likes the option for monthly meetings, which may be cancelled if there is no reason to meet. Katie Lucchesi (Lodi) made a motion to approve the monthly meeting schedule under option C, with a meeting start time of 9:00 a.m.; second by Amy Bartell (Palo Alto). The group favored the start time at 9:00 a.m. instead of 8:30 a.m. A roll call vote was taken, as follows. The motion passed.

Vote Summary on Motion	
Participant	Vote
Alameda Municipal Power	Yes
BART	Yes
Biggs	Yes
Gridley	Absent
Healdsburg	Absent
Lodi	Yes
Lompoc	Absent
Palo Alto	Yes
Plumas-Sierra	Absent
Port of Oakland	Yes
Redding	Yes
Roseville	Yes
Santa Clara	Yes
Shasta Lake	Absent
Truckee Donner PUD	Absent
Ukiah	Yes
Vote Summary	
Total Yes	10
Total Noes	0
Total Abstain	0
Total Absent	6
Result:	Motion passed.

8. Election of Legal Committee Chair to Become Effective at the Close of the October 6, 2023 Legal Committee Meeting

Jane Luckhardt introduced this item and said that Barry DeWalt will chair the annual Legal Committee meeting and that the gavel will pass to the newly elected Chair at the end of the meeting. Barry DeWalt (Redding) made a motion to elect Amy Bartell for the position of Chair of the Legal Committee to become effective at the close of the October 6, 2023 meeting; second by Rachel Sommovilla (Port of Oakland). There was no discussion. A roll call vote was taken, as follows. The motion passed.

Vote Summary on Motion	
Participant	Vote
Alameda Municipal Power	Yes
BART	Yes
Biggs	Yes
Gridley	Absent
Healdsburg	Absent
Lodi	Yes
Lompoc	Absent
Palo Alto	Abstain
Plumas-Sierra	Absent
Port of Oakland	Yes
Redding	Yes
Roseville	Yes
Santa Clara	Yes
Shasta Lake	Absent
Truckee Donner PUD	Absent
Ukiah	Yes

Vote Summary	
Total Yes	9
Total Noes	0
Total Abstain	1
Total Absent	6
Result:	Motion passed.

9. Election of Legal Committee Vice Chair to Become Effective at the Close of the October 6, 2023 Legal Committee Meeting

Barry DeWalt made a motion to elect Joe Mandell for the position of Vice Chair of the Legal Committee to become effective at the close of the October 6, 2023 meeting; second by Lonnie Eldridge (Alameda Municipal Power). There was no discussion. A roll call vote was taken as follows. The motion passed.

Vote Summary on Motion	
Participant	Vote
Alameda Municipal Power	Yes
BART	Yes
Biggs	Yes
Gridley	Absent
Healdsburg	Absent
Lodi	Yes
Lompoc	Absent
Palo Alto	Yes
Plumas-Sierra	Absent
Port of Oakland	Yes
Redding	Yes
Roseville	Abstain
Santa Clara	Yes
Shasta Lake	Absent
Truckee Donner PUD	Absent
Ukiah	Yes
Vote Summary	
Total Yes	9
Total Noes	0
Total Abstain	1
Total Absent	6
Result:	Motion Passed

10. Legal Committee Charter

Jane Luckhardt presented an updated version of a Charter for the Legal Committee to identify its purpose, structure and operations, information about its meetings, and jurisdiction. Joe Mandell (Roseville) made a motion to approve the Charter as presented at the meeting; second by Rachel Sommovilla (Port of Oakland). There was no discussion. A roll call vote was taken as follows. The motion passed.

Vote Summary on Motion	
Participant	Vote
Alameda Municipal Power	Yes
BART	Yes
Biggs	Yes
Gridley	Absent
Healdsburg	Absent
Lodi	Yes
Lompoc	Absent
Palo Alto	Yes
Plumas-Sierra	Absent
Port of Oakland	Yes
Redding	Yes
Roseville	Yes
Santa Clara	Yes
Shasta Lake	Absent
Truckee Donner PUD	Absent
Ukiah	Yes
Vote Summary	
Total Yes	10
Total Noes	0
Total Abstain	0
Total Absent	6
Result:	Motion passed

11. General Counsel Updates

Jane Luckhardt said NCPA has a number of projects in development and she will be bringing the Second Phase Agreements for the committee’s review. The first she expects to bring forward is the agreement for CT2’s (STIG) repower project. She also mentioned that Shasta Lake has a solar project in the works. Barry DeWalt said his actual retirement date is December15 and recruitment is under way.

12. Adjournment.

The meeting was adjourned at 9:25 a.m.

Respectfully submitted,

Linda Stone



651 Commerce Drive
Roseville, CA 95678

phone (916) 781-3636
fax (916) 783-7693
web www.ncpa.com

NCPA Annual Legal Committee Meeting Minutes

Date: Wednesday, October 4, 2023

Time: 2:00 p.m. Pacific Time

Location: Portola Hotel and Spa at Monterey Bay, 2 Portola Plaza, Bonsai Ballroom, Monterey, CA and teleconference locations

Subject: NCPA Annual Legal Committee Meeting

1. Call Meeting to Order and Roll Call

The Legal Committee meeting was called to order at 2:05 p.m. by Chair Barry DeWalt. At the time of roll call, the following members were present: In person: Alameda Municipal Power-Lonnie Eldridge; Lodi-Katie Lucchesi; Port of Oakland-Rachel Sommovilla; Redding-Barry DeWalt; Roseville-Joe Mandell; and Santa Clara-Daniel Ballin. Via Zoom: BART-Mary Wilke; Healdsburg-Samantha Zutler; Palo Alto-Amy Bartell, Plumas-Sierra-Michael Vergara; and Ukiah-Darcy Vaughn. A quorum was present.

Also attending the meeting by Zoom were Melissa Price, Eric Wong, Jiayo Chang, Jillian Jurcyk, Katie Edgar, Khaly Nguyen, Mark Beauchamp, Joanna Lucchi; and attending in person were Roseville City Attorney Michelle Sheidenberger, NCPA General Manager Randy Howard, NCPA General Counsel Jane Luckhardt, NCPA administrative support Linda Stone, and numerous members and guests.

2. Public Comment

The Chair read the notification regarding Public Comment and asked if any member of the public would like to address the Committee. There was no public comment.

3. Resolution Commending Barry E. DeWalt

NCPA General Counsel Jane Luckhardt spoke to the group about Barry E. DeWalt, who has served as the Legal Committee Chair for over nine years and served the City of Redding as its City Attorney since 2015. Jane read the proposed Resolution of the Legal Committee commending Barry DeWalt which highlights his outstanding service for the City, the Committee, and which shares some little-known facts about Barry. Michael Vergara (Plumas-Sierra) made a motion to approve the Resolution commending Barry DeWalt for his years of service; seconded by Joe Mandell (Roseville). Many congratulatory comments were made. A roll call vote was taken, as follows. The motion passed.

Vote Summary on Motion	
Participant	Vote
Alameda Municipal Power	Yes
BART	Yes
Biggs	Absent
Gridley	Absent
Healdsburg	Yes
Lodi	Yes
Lompoc	Yes
Palo Alto	Yes
Plumas-Sierra	Yes
Port of Oakland	Yes
Redding	Yes
Roseville	Yes
Santa Clara	Yes
Shasta Lake	Absent
Truckee Donner PUD	Absent
Ukiah	Yes
Vote Summary	
Total Yes	12
Total Noes	0
Total Abstain	0
Total Absent	4
Result:	Motion Passed.

Jane Luckhardt presented Barry with a framed Resolution. Barry thanked Jane and the Committee and addressed the meeting expressing his mixed emotions. He noted “that this is the last time I will participate in this annual meeting and be with you all. It has been a pleasure to be part of this committee.” He received a hearty round of applause.

4. Presentation “Public Utility Rates Structures: Limitations and Options.”

Jane Luckhardt introduced Matthew Slentz of Colantuono, Highsmith & Whatley, PC. He presented a PowerPoint entitled Public Utility Rates Structures: Limitations and Options. The presentation covered municipal finance overview, income based fixed rates, general fund transfers, and CBRT proposition. At the conclusion of his informative prepared remarks, Mr. Slentz fielded questions from the audience and participants on the phone.

5. Adjournment.

The meeting was adjourned at 3:00 p.m.

Respectfully submitted,

Linda Stone

|

**SECOND PHASE AGREEMENT FOR NCPA COMBUSTION TURBINE
2 HYDROGEN CONVERSION PROJECT**

DRAFT

TABLE OF CONTENTS

Section 1. Definitions.....	5
Section 2. Purpose.....	10
Section 3. Authorities, Obligations, and Allocation of Project Cost.....	10
Section 4. Participation.....	15
Section 5. Billing and Payments.....	17
Section 6. Cooperation and Further Assurances.....	19
Section 7. Term and Termination.....	19
Section 8. Withdrawal of Participants.....	20
Section 9. Settlement of Disputes and Arbitration.....	20
Section 10. Miscellaneous.....	21
EXHIBIT A: CURRENT CT2 MEMBERS.....	1
EXHIBIT B: FINAL PARTICIPANTS.....	1
EXHIBIT C:1	
EXHIBIT D:.....	i

This SECOND PHASE AGREEMENT FOR NCPA COMBUSTION TURBINE 2 HYDROGEN CONVERSION PROJECT (this "Agreement") is dated as of _____ 20__ by and among the Northern California Power Agency, a joint powers agency of the State of California ("NCPA"), and the signatories to this Agreement other than NCPA ("Participants"). NCPA and the Participants are referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

A. NCPA has heretofore been duly established as a public agency pursuant to the Joint Exercise of Powers Act of the Government Code of the State of California and, among other things, is authorized to acquire, construct, finance, and operate buildings, works, facilities and improvements for the generation and transmission of electric capacity and energy for resale.

B. Each of the Participants is a signatory to the Joint Powers Agreement which created NCPA and therefore, is a Member.

C. Each of the Participants to this Agreement have executed the Amended and Restated Facilities Agreement which establishes the framework under which Project Agreements are created for the development, design, financing, construction, and operation of specific NCPA Projects.

D. NCPA and each of the Participants are interested in converting the existing Combustion Turbine 2's turbine to a hydrogen capable turbine to meet the future energy

and resource adequacy demands of the Participants while also reducing carbon emissions (the “CT2 Hydrogen Conversion Project”).

E. The Parties desire NCPA to develop cost estimates, project schedule and project design and if approved by NCPA’s Commission and the Participants, to finance, construct, own and operate the CT2 Hydrogen Conversion Project.

F. Each Participant is authorized by its Constitutive Documents to obtain electric capacity and energy for its present or future requirements, through contracts with NCPA or otherwise.

G. This Agreement is intended to enable NCPA on behalf of the Participants, pursuant to the terms and conditions of the Amended and Restated Facilities Agreement, to provide all means necessary for NCPA to conduct all pre-construction activities associated with the development of the CT2 Hydrogen Conversion Project, and to enable and obligate the Participants to pay NCPA for all costs it incurs for undertaking the foregoing activities.

H. Contingent upon presenting a proposal that meets Participants’ needs, negotiating mutually acceptable terms and conditions with one or more prospective suppliers and/or one or more prospective contractors, NCPA will present the proposed CT2 Hydrogen Conversion Project and associated Third Phase Agreement to the NCPA Commission for review and approval. Contemporaneously, NCPA will seek final approval from Participants through a Third Phase Agreement for the CT2 Hydrogen Conversion

Project that would govern the rights and obligations of NCPA and Participants related to the financing, design, construction, operation, and sale and purchase of Products from the CT2 Hydrogen Conversion Project.

I. Each of the Parties intends to observe the provisions of this Agreement in good faith and shall cooperate with all other Parties in order to achieve the full benefits of joint action.

J. The Parties desire to equitably allocate costs of NCPA's provision of services under this Agreement among the Participants.

K. The Participants further desire, insofar as possible, to insulate other Members who are not Participants, from risks inherent in the services and transactions undertaken on behalf of the Participants pursuant to this Agreement.

NOW, THEREFORE, the Parties agree as follows:

Section 1. Definitions.

1.1 Definitions. Whenever used in this Agreement (including the Recitals hereto), the following terms shall have the following respective meanings, provided, capitalized terms used in this Agreement (including the Recitals hereto) that are not defined in Section 1 of this Agreement shall have the meaning indicated in Section 1 of the Power Management and Administrative Services Agreement:

1.1.1 "Agreement" means this Second Phase Agreement for NCPA CT2 Hydrogen Conversion Project including all Exhibits attached hereto.

1.1.2 "Capacity Attributes" means any and all current or future defined characteristics consistent with the operational limitations of the Project, certificates, tags, credits, ancillary service attributes, or accounting constructs, howsoever entitled, including resource adequacy benefits, Flexible Capacity Benefits, and any tracking or accounting associated with the foregoing, intended to value any aspect of the capacity of the Project to produce Energy or ancillary services, attributed to or associated with the Project.

1.1.3 "Constitutive Documents" means, with respect to NCPA, the Joint Powers Agreement and any resolutions or bylaws adopted thereunder with respect to the governance of NCPA, and with respect to each Participant, the California Government Code and other statutory provisions applicable to such Participant, any applicable agreements, charters, contracts or other documents concerning the formation, operation or decision making of such Participant, including, if applicable, its City Charter, and any codes, ordinances, bylaws, and resolutions adopted by such Participant's governing body.

1.1.4 "Effective Date" shall have the meaning set forth in Section 7 of this Agreement.

1.1.5 "Energy" means electric energy expressed in units of kWh or MWh.

1.1.6 "Environmental Attributes" means all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from

the Project if available and to the extent the Project is fueled with qualifying hydrogen and its displacement of conventional energy generation. Environmental Attributes include: (i) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (ii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (iii) the reporting rights to these avoided emissions such as, but not limited to, a Renewable Energy Certificate ("REC").

Environmental Attributes do not include: (i) any Energy, capacity, reliability or other power attributes from the CT2 Hydrogen Conversion Project, (ii) production tax credits associated with the construction or operation of the CT2 Hydrogen Conversion Project, and other financial incentives in the form of credits, reductions, or allowances associated with the CT2 Hydrogen Conversion Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to seller to accept certain fuels, or local subsidies received by seller or the owners of the site for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the CT2 Hydrogen Conversion Project for compliance with local, state, or federal operating and/or air quality permits.

1.1.7 “Flexible Capacity” has the meaning set forth in the CAISO
Tariff.

1.1.8 “Flexible Capacity Benefits” means the rights and privileges
attached to any generating resource that satisfy any entity’s Flexible Capacity requirement.

1.1.9 “Current CT2 Members” shall have the meaning as set forth in
Section 4.2.

1.1.10 “NCPA” has the meaning set forth in the preamble hereto.

1.1.11 “Participant” has the meaning set forth in the Recitals of this
Agreement.

1.1.12 “Power Management and Administrative Services Agreement”
means the NCPA Power Management and Administrative Services Agreement, dated as of
October 1, [2014](#), between NCPA and the Members who are signatories to that agreement
by which NCPA provides Power Management and Administrative Services.

1.1.13 “Product” means Energy, Capacity Attributes and Environmental
Attributes delivered to the Participants pursuant to a Third Phase Agreement for the CT2
Hydrogen Conversion Project.

1.1.14 “Project” means the NCPA CT2 Hydrogen Conversion Project as
defined in the Recitals of this Agreement.

1.1.15 “Party” or “Parties” has the meaning set forth in the preamble
hereto; provided that “Third Parties” are entities that are not Party to this Agreement.

1.1.16 “Renewable Energy Supply” refers to power supply resources eligible for use under the Renewable Portfolio Standard Program.

1.1.17 “RPS” or “Renewable Portfolio Standard Program” means the State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11, *et seq.*

1.1.18 “Term” has the meaning set forth in Section 7.

1.2 Rules of Interpretation. As used in this Agreement (including the Recitals hereto), unless in any such case the context requires otherwise: The terms “herein,” “hereto,” “herewith” and “hereof” are references to this Agreement taken as a whole and not to any particular provision; the term “include,” “includes” or “including” shall mean “including, for example and without limitation;” and references to a “Section,” “subsection,” “clause,” “Appendix,” “Schedule”, or “Exhibit” shall mean a Section, subsection, clause, Appendix, Schedule or Exhibit of this Agreement, as the case may be. All references to a given agreement, instrument, tariff or other document, or law, regulation or ordinance shall be a reference to that agreement, instrument, tariff or other document, or law, regulation or ordinance as such now exists and as may be amended from time to time, or its successor. A reference to a “person” includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether having a separate legal personality and includes its successors and permitted assigns. A reference to a “day” shall mean a Calendar Day

unless otherwise specified. The singular shall include the plural and the masculine shall include the feminine, and *vice versa*.

Section 2. Purpose.

The purpose of this Agreement is to: (i) set forth the terms and conditions under which NCPA shall on behalf of the Participants solicit proposals for and negotiate agreements for preliminary engineering, preliminary equipment selection, ~~and~~ cost estimates ~~and secure vital equipment~~ for the Project, (ii) authorize NCPA on behalf of the Participants to create a complete Project proposal, schedule and cost estimate, (iii) direct NCPA to evaluate financing options, solicit proposals for Project financing and create a Project financing proposal, (iv) authorize NCPA, acting on behalf the Participants, to engage in all activities related to those basic purposes, and (v) specify the rights and obligations of the Parties with respect to developing a Project proposal, schedule and cost estimate, and Project financing proposal.

Section 3. Authorities, Obligations, and Allocation of Project Cost.

3.1 Authorities. Upon the Effective Date of this Agreement, NCPA is hereby authorized to conduct all work necessary to complete its obligations under this Agreement as described in ~~{Section 3.2 below/Exhibit XX}~~. ~~Section 3.2.~~

3.2 Obligations of NCPA. Upon the Effective Date of this Agreement, NCPA shall commence work pertaining to its duties under this Agreement, as summarized in the following table and described further below. NCPA, on behalf of itself and Participants, shall act as lead or responsible agency for the purposes of any environmental review of or

notice of exemption for the Project, shall act as project manager for all activities, and is responsible for engaging necessary expert professional services including those of NCPA staff. The following table includes Phase 2 activities:

NCPA Tasks, Due Dates and Budget			
Task	Due Date	Budget	
Preliminary Engineering			
Project Schedule			
Project Proposal & Cost Estimate			
Project Financing Proposal			

Activity Detail Table	Start Date	End Date	Cost
<u>Owner Engineers for Phase 2 Support</u>	<u>7/10/2024</u>	<u>4/26/2026</u>	<u>\$ 500,000</u>
<u>PGE & CAISO LGIA - Interconnection Study</u>	<u>7/10/2024</u>	<u>7/10/2025</u>	<u>\$ 50,000</u>
<u>Preliminary designs for demolition, construction, and system operation</u>	<u>10/18/2025</u>	<u>1/16/2026</u>	<u>\$ 500,000</u>
<u>Partial payment and Plans for Engine and Controls</u>	<u>1/26/2026</u>	<u>4/26/2026</u>	<u>\$ 1,800,000</u>
<u>Partial payment and Plans for Retrofit Exhaust Package with CO, SCR, AIG</u>	<u>1/26/2026</u>	<u>4/26/2026</u>	<u>\$ 400,000</u>
<u>Partial payment and Plans for BOP and Electric Inlet Heater/Chillers</u>	<u>1/26/2026</u>	<u>4/26/2026</u>	<u>\$ 400,000</u>
<u>AFC and CEQA Consultant</u>	<u>10/18/2025</u>	<u>4/16/2026</u>	<u>\$ 100,000</u>
<u>Legal Consultant</u>	<u>10/18/2025</u>	<u>4/16/2026</u>	<u>\$ 100,000</u>
<u>Document Control Support</u>	<u>10/18/2025</u>	<u>4/16/2026</u>	<u>\$ 100,000</u>
<u>Air Permit Consultant</u>	<u>10/18/2025</u>	<u>4/16/2026</u>	<u>\$ 100,000</u>
<u>Green House Gas (GHG) Offset Consultant</u>	<u>10/18/2025</u>	<u>4/16/2026</u>	<u>\$ 100,000</u>
Total Cost for Phase 2	4/1/2024	1/26/2026	\$ 4,150,000

3.2.1 Owner Engineers for Phase 2 Support - This activity includes retaining an Owners Engineer. The Owner Engineer provides Phase 2 preliminary engineering support, develops the Request for Proposal (RFP) for the Engineer 1, the

overall system and integration engineer, develops the RFP for the Engineer 3, the CEQA processing engineer, and develops the Organization Chart for Phase 3 which includes project construction to commercial operation.
Preliminary Engineering: NCPA will solicit proposals for and select an engineering firm to conduct the preliminary engineering, evaluate such engineering work, and

3.2.1

3.2.2 — PGE & CAISO LGIA Interconnection Study - This activity includes the CAISO interconnection study process.
Project Schedule: NCPA will create an project schedule including engineering, bidding, financing, construction and commissioning

3.2.2

3.2.3 — PGE Standby Power for PGE - This task involves determining the standby load capacity and revising or creating necessary PGE standby agreements for the project.
Project Proposal and Cost Estimate: NCPA will create a Project proposal and cost estimate . . . [including but not limited to design and specifications (cold weather standards), prepare conceptual physical and electrical layout diagrams, provide capital, identify site preparation requirements, identify permit requirements including any required environmental review under CEQA, and identify other risks and recommendations???].

3.2.3

3.2.4 Preliminary designs for demolition, construction, and system operation - This activity includes retaining the design engineer to support the pre-preliminary engineering in the Phase 2 agreement. The design engineer is responsible for generating preliminary comprehensive designs for the demolition, construction, and operational aspects of the entire system. Additionally, they are tasked with formulating the Request for Proposals (RFP) for all equipment, creating the construction budget and cash flow projection, and establishing the timeline for Phase 3.Project Financing Proposal: NCPA will evaluate and present a project financing proposal or proposals

3.2.5 Partial payment and Plans for Engine and Controls. - This activity includes 10% down on the engine and controls package to secure ordering placement and equipment plans.

3.2.6 Partial payment and Plans for Retrofit Exhaust Package with CO, SCR, AIG. - This activity includes 10% down on a retrofit exhaust package including the CO, SCR, AIG to secure ordering placement and equipment plans.

3.2.7 Partial payment and Plans for BOP and Electric Inlet Heater/Chillers. - This activity includes 10% down on the electric inlet heaters and chillers to secure ordering placement and equipment plans.

3.2.8 AFC and CEQA - This activity will include retaining a CEQA consultant to manage the CEQA processes.

3.2.9 Legal Support - This activity includes retaining a legal consultant to manage the legal and contracting processes.

3.2.10 Document Control Support - This activity includes retaining a CEQA consultant to manage the CEQA process.

3.2.11 Air Permits - This activity involves hiring a consultant to oversee air permitting needs for the project.

3.2.43.2.12 Offsets - This activity involves hiring an offset specialist to manage offsets for the project.

3.3 Obligations of Participants.

3.3.1 Participants hereby agree to pay or advance to NCPA in accordance with this Agreement all NCPA's actual costs, including administrative costs, including legal fees, associated with the activities under this Agreement. Those costs shall be allocated to Participants in accordance with the Project Participant Percentages as reflected in Exhibit B.

3.3.2 Upon execution of this Agreement, Participant shall identify the individual(s) who will be representing that Participant as part of an ad hoc committee reviewing the information developed by NCPA staff to achieve the purposes of this Agreement as described in Section 2. Participants' designees shall be listed in Exhibit B.

3.3.3 NCPA and Participants hereby agree to conduct all necessary work, secure all necessary authorities, transmit all necessary forms, and to work

collaboratively to complete all activities in a timely manner, with the goal that a final decision on whether to proceed to the Third Phase Agreement and construct the CT2 Hydrogen Conversion Project **no later than _____, 202?**.

3.4 Adjustments to Project Participant Share. The Project Participant Percentages of each Participant may be revised upon execution of a Third Phase if any Participant withdraws in whole or in part and/or a **new Participant join**. Notwithstanding the foregoing, Participants are responsible for all obligations and actual costs incurred up to the effective date of changes to participation levels.

3.5 Third Phase Agreement Funding and Participation. The Third Phase Agreement that supersedes and replaces this Agreement, if any, shall provide for reimbursement, retirement or refunding of (1) any preliminary expenditures including financing costs, architectural, engineering, surveying, soil testing, debt issuance costs, and (2) expenditures relating to the acquisition, construction, and commissioning of the Project, of any expenditure of the Participants in the Second Phase of the Project, out of final long-term financing of the Project, or other funding method, including but not limited to cash payments. **This provision is also meant to be consistent with the requirements of Section 1.150-2 of the Treasury Regulations.**

Section 4. Participation.

4.1 Eligibility. All Members signatory to the Amended and Restated Facilities Agreement are eligible to participate in this Agreement subject to available Project capacity by delivering a duly executed copy to NCPA.

4.2 Priority. Air New Zealand, the last entity performing maintenance on the CT2 turbine, informed NCPA that they are no longer supporting the equipment leaving no entity willing and able to maintain the CT2 turbine. In response to the notice from Air New Zealand and to further the interests of the current CT2 project participants, NCPA developed this Agreement to obtain funding commitments from Members for an evaluation of the merits of the CT2 Hydrogen Conversion Project. The existing CT2 project participants who have paid for the CT2 Project to date have the first priority to maintain their participation percentages in the CT2 Hydrogen Conversion Project (hereinafter referred to as the "Current CT2 Members"). The Current CT2 Members are listed in Exhibit A. Thus, as to participating percentages in the CT2 Hydrogen Conversion Project, first priority will be given to the Current CT2 Members and should any Current CT2 Members decide not to participate in the CT2 Hydrogen Conversion Project, that participant share shall be available to all other Members who wish to become a CT2 Hydrogen Conversion Participant. Should capacity become available, the remaining available capacity will be allocated to all other interested Members based on a first-come first-serve basis, until the total number of available shares is taken.

4.3 Final Participation Percentages. Upon the Effective Date of this Agreement, NCPA shall include each Participant's Final Project Participation Percentage in Exhibit B. NCPA shall update Exhibit B to reflect changes in Participants and/or Project Participation Percentages, in writing, and shall provide written notice to Participants of such changes.

Section 5. Billing and Payments

5.1 Participant Payment Obligations. Each Participant agrees to pay to NCPA each month its respective portion of the actual costs and all other costs for services associated with activities authorized under this Agreement and the Amended and Restated Facilities Agreement.

5.2 Invoices. NCPA will issue an invoice to each Participant for its share of actual costs associated with developing a Project proposal, cost estimate and financing proposal, and all other costs for services provided in support of those activities in accordance with this Agreement and the Amended and Restated Facilities Agreement. Such an invoice may be either in the All Resources Bill (ARB) or in a separate special invoice, as determined by NCPA. At NCPA's discretion, invoices may be issued to Participants using electronic media or physical distribution.

5.3 Payment of Invoices. All invoices delivered by NCPA (including the ~~All Resources Bill~~ARB) are due and payable thirty (30) Calendar Days after the date thereof; provided, however, that any amount due on a day other than a Business Day may be paid on the following Business Day.

5.4 Late Payments. Any amount due and not paid by a Participant in accordance with Section 4.3 shall be considered late and bear interest computed on a daily basis until paid at the lesser of (i) the per annum prime rate (or reference rate) of the Bank of America NT&SA then in effect, plus two percent (2%) or (ii) the maximum rate permitted by law.

5.5 Billing Disputes. A Participant may dispute the accuracy of any invoice issued by NCPA under this Agreement by submitting a written dispute to NCPA, within thirty (30) Calendar Days of the date of such invoice; nonetheless the Participant shall pay the full amount billed when due. If a Participant does not timely question or dispute the accuracy of any invoice in writing, it shall be deemed correct. Upon review of a submitted dispute, if an invoice is determined by NCPA to be incorrect, NCPA shall issue a corrected invoice and refund any amounts that may be due to the Participant. If NCPA and the Participant fail to agree on the accuracy of an invoice within thirty (30) Calendar Days after the Participant has disputed it, the General Manager shall promptly submit the dispute to the Commission for resolution. If the Commission and the Participant fail to agree on the accuracy of a disputed invoice within sixty (60) Calendar Days of its submission to the Commission, the dispute may then be resolved under the mediation and arbitration procedures set forth in Section 11 of this Agreement. Provided, however, that prior to resorting to either mediation or arbitration proceedings, the full amount of the disputed invoice must be paid.

5.6 Billing/Settlement Data and Examination of Books and Records.

5.6.1 Settlement Data. NCPA shall make billing and settlement data available to the Participants in the All Resources Bill ARB, or other invoice, or upon request. NCPA may also, at its sole discretion, make billing and settlement support information available to Participants using electronic media (e.g., electronic data portal). Procedures and formats for providing such electronic data submission may be established by the Commission. Without limiting the generality of the foregoing, NCPA may, in its reasonable discretion, require the Participants to execute a non-disclosure agreement prior to providing access to the NCPA electronic data portal.

5.6.2 Examination of Books and Records. Any Participant in this Agreement shall have the right to examine the books and records created and maintained by NCPA pursuant to this Agreement at any reasonable, mutually agreed upon time.

Section 6. Cooperation and Further Assurances.—

Each of the Parties agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by any other Party which are consistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement. The Parties agree to cooperate and act in good faith in obtaining any credit support required to satisfy the requirements of this Agreement.

Section 7. Term and Termination.

This Agreement shall become effective when it has been duly executed by NCPA and at least one Participant (the "Effective Date"). The date on which NCPA makes this Agreement effective shall be determined by NCPA, at its sole discretion. NCPA shall deliver a written notice to all signatories to this Agreement and all Members signatory to the Amended and Restated Facilities Agreement, stating the Effective Date of this Agreement. This Agreement shall commence on the Effective Date and shall continue until the Agreement terminates, which shall occur when either:

7.1 All activities pursuant to this Agreement are terminated by NCPA in its discretion; or

7.2 Upon the effective date of a Third Phase Agreement with one or more Participants for the CT2 Hydrogen Conversion Project.

Section 8. Withdrawal of Participants.

No Participant may withdraw from this Agreement except as otherwise provided herein.

Section 9. Settlement of Disputes and Arbitration.

The Parties agree to make their best efforts to settle all disputes among themselves connected with this Agreement as a matter of normal business under this Agreement. The procedures set forth in Section 10 of the Power Management and Administrative Services Agreement shall apply to all disputes that cannot be settled by the Participants themselves; provided, that the provisions of Section 5.5 of this Agreement shall first apply to all disputes involving invoices prepared by NCPA.

Section 10. Miscellaneous.

10.1 Indemnification and Hold Harmless. Subject to the provisions of Section 10.3, each Participant agrees to indemnify, defend and hold harmless NCPA and its Members, including their respective governing boards, officials, officers, agents, and employees, from and against any and all claims, suits, losses, costs, damages, expenses and liability of any kind or nature, including reasonable attorneys' fees and the costs of litigation, including experts, to the extent caused by any acts, omissions, breach of contract, negligence (active or passive), gross negligence, recklessness, or willful misconduct of that Participant, its governing officials, officers, employees, subcontractors or agents, to the maximum extent permitted by law.

10.2 Several Liabilities. No Participant shall, in the first instance, be liable under this Agreement for the obligations of any other Participant or for the obligations of NCPA incurred on behalf of other Participants. Each Participant shall be solely responsible and liable for the performance of its obligations under this Agreement, except as otherwise provided herein. The obligation of each Participant under this Agreement is, in the first instance, several obligations and not a joint obligation with those of the other Participants.

Notwithstanding the foregoing, the Participants acknowledge that any debts or obligations incurred by NCPA under this Agreement on behalf of any of them shall be borne solely by such Participants, and not by non-Participant Members of NCPA, pursuant to Article IV, Section 3(b) of the Joint Powers Agreement.

10.3 No Consequential Damages. -FOR ANY BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE HEREBY WAIVED. IN NO EVENT SHALL NCPA OR ANY PARTICIPANT OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, REPRESENTATIVES, DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES BE LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING LOSS OF USE, LOSS OF GOODWILL, LOST REVENUES, LOSS OF PROFIT OR LOSS OF CONTRACTS EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NCPA AND EACH PARTICIPANT EACH HEREBY WAIVES SUCH CLAIMS AND RELEASES EACH OTHER AND EACH OF SUCH PERSONS FROM ANY SUCH LIABILITY.

The Parties acknowledge that California Civil Code section 1542 provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her

must have materially affected his or her settlement with the debtor.” The Parties waive the provisions of section 1542, or other similar provisions of law, and intend that the waiver and release provided by this Section of this Agreement shall be fully enforceable despite its reference to future or unknown claims.

10.4 Waiver.—No waiver of the performance by a Party of any obligation under this Agreement with respect to any default or any other matter arising in connection with this Agreement shall be effective unless given by the Commission. Any such waiver by the Commission in any instance shall not be deemed a waiver with respect to any subsequent performance, default, or matter.

10.5 Amendments.—Except where this Agreement specifically provides otherwise, this Agreement may be amended only by written instrument executed by the Parties with the same formality as this Agreement.

10.6 Assignment of Agreement.

10.6.1 Binding Upon Successors.—This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assignees of the Parties to this Agreement.

10.6.2 No Assignment.—Neither this Agreement, nor any interest herein, shall be transferred or assigned by a Party hereto except with the consent in writing of the other Parties hereto, which such consent shall not be unreasonably withheld, provided that such transfer or assignment shall be only to another NCPA Member.

10.7 Severability. -In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Agreement.

10.8 Governing Law. -This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

10.9 Headings. -All indices, titles, subject headings, section titles and similar items are provided for the purpose of convenience and are not intended to be inclusive, definitive, or affect the meaning of the contents of this Agreement or the scope thereof.

10.10 Notices. -Any notice, demand or request required or authorized by this Agreement to be given to any Party shall be in writing, and shall either be personally delivered to a Participant's Commissioner or Alternate, and to the General Manager, or shall be transmitted to the Participant and the General Manager at the addresses shown on the signature pages hereof. The designation of such addresses may be changed at any time by written notice given to the General Manager who shall thereupon give written notice of such change to each Participant. All such notices shall be deemed delivered when personally delivered, two (2) Business Days after deposit in the United States mail

first class postage prepaid, or on the first Business Day following delivery through electronic communication.

10.11 Warranty of Authority. -Each Party represents and warrants that it has been duly authorized by all requisite approval and action to execute and deliver this Agreement and that this Agreement is a binding, legal, and valid agreement enforceable in accordance with its terms. Upon execution of this Agreement, each Participant shall deliver to NCPA a resolution of the governing body of such Participant evidencing approval of and authority to enter into this Agreement.

10.12 Counterparts. -This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all the signatories to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

10.13 Venue. **If** a Party brings any action under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.

10.14 Attorneys' Fees. -If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, each

Party shall bear its own fees and costs, including attorneys' fees, associated with the action.

10.15 Counsel Representation.- Pursuant to the provisions of California Civil Code Section 1717 (a), each of the Parties were represented by counsel in the negotiation and execution of this Agreement and neither Party is the author of this Agreement or any of its subparts.- Those terms of this Agreement which dictate the responsibility for bearing any attorney's fees incurred in arbitration, litigation, or settlement in a manner inconsistent with the provisions of Section 12.1 were intentionally so drafted by the Parties, and any ambiguities in this Agreement shall not be interpreted for or against a Party by reason of that Party being the author of the provision.

10.16 No Third-Party Beneficiaries. -Nothing contained in this Agreement is intended by the Parties, nor shall any provision of this Agreement be deemed or construed by the Parties, by any third person or any Third Parties, to be for the benefit of any Third Party, nor shall any Third Party have any right to enforce any provision of this Agreement or be entitled to damages for any breach by the Parties of any of the provisions of this Agreement.

IN WITNESS WHEREOF, NCPA and each Participant have, by the signature of its duly authorized representative shown below, executed and delivered a counterpart of this Agreement.

NORTHERN CALIFORNIA
POWER AGENCY
651 Commerce Drive
Roseville, CA 95678

CITY OF ALAMEDA
2000 Grand Street
P.O. Box H
Alameda, CA 94501

By: _____
Title: Randy S. Howard
Date: General Manager _____

By: _____
Title: _____
Date: _____

Approved as to form:

Approved as to form:

By: _____
Title: Jane Luckhardt
Date: General Counsel _____

By: _____
Title: _____
Date: _____

Attestation (if applicable)

Attestation (if applicable)

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

CITY OF

CITY OF LODI
221 W. Pine Street
Lodi, CA 95240

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Approved as to form:

Approved as to form:

By: _____
Title: _____
Date: _____

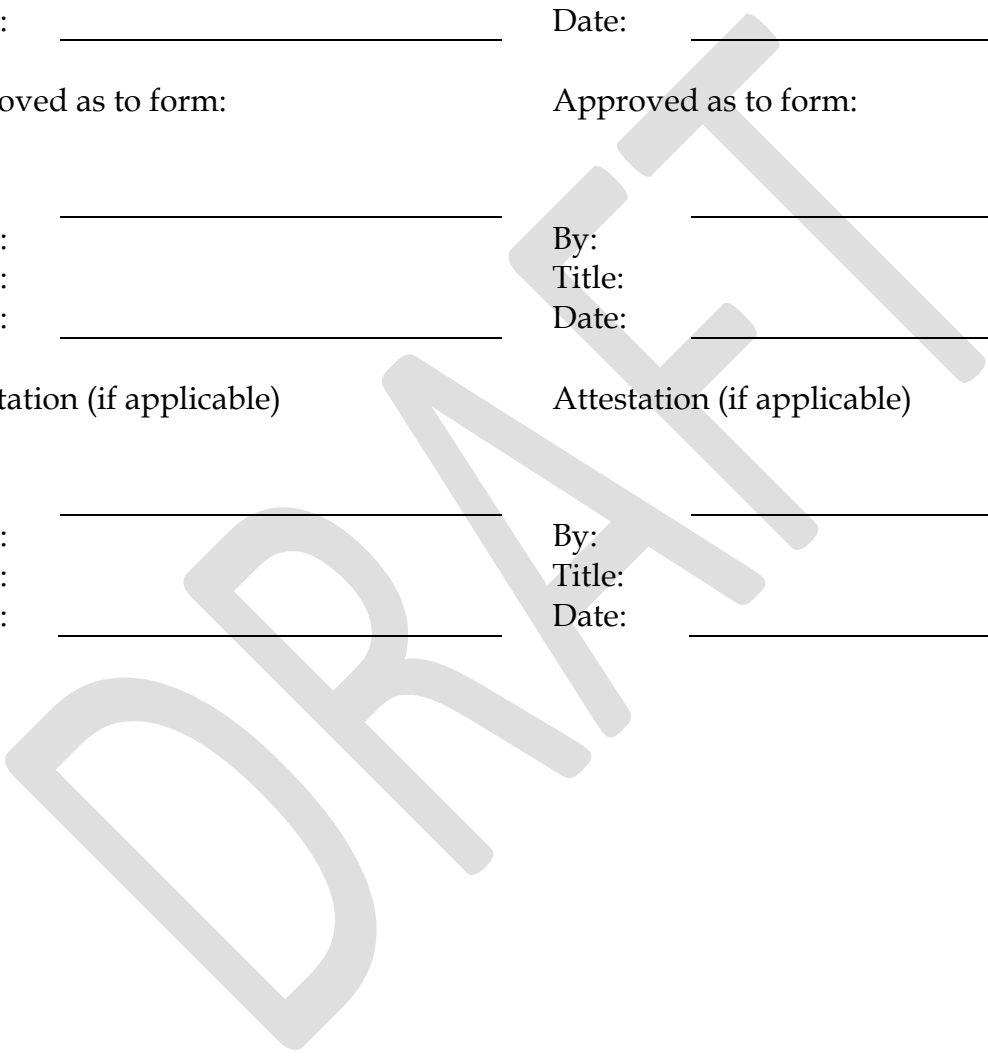
By: _____
Title: _____
Date: _____

Attestation (if applicable)

Attestation (if applicable)

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____



CITY OF LOMPOC
100 Civic Center Plaza
Lompoc, CA 93436

CITY OF

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Approved as to form:

Approved as to form:

By: _____
Title: _____
Date: _____

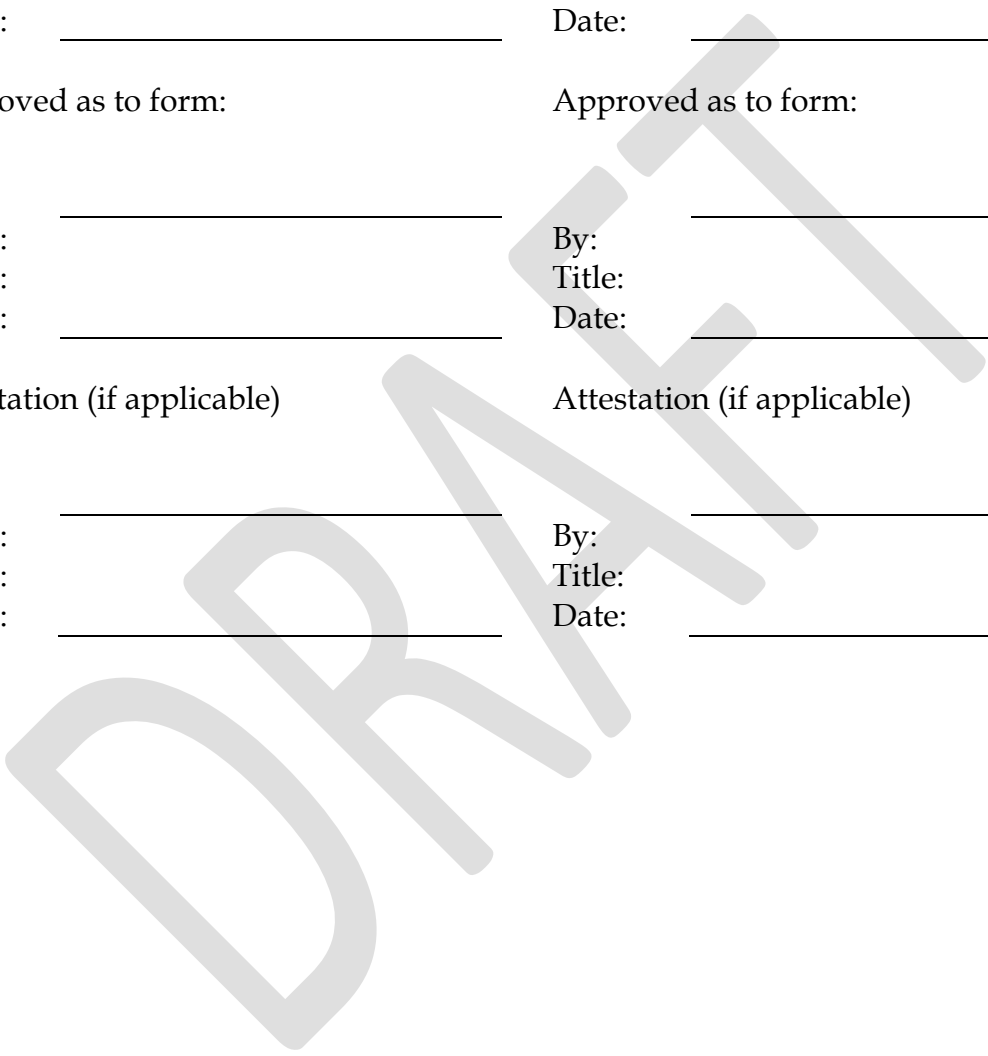
By: _____
Title: _____
Date: _____

Attestation (if applicable)

Attestation (if applicable)

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____



CITY

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Approved as to form:

Approved as to form:

By: _____
Title: _____
Date: _____

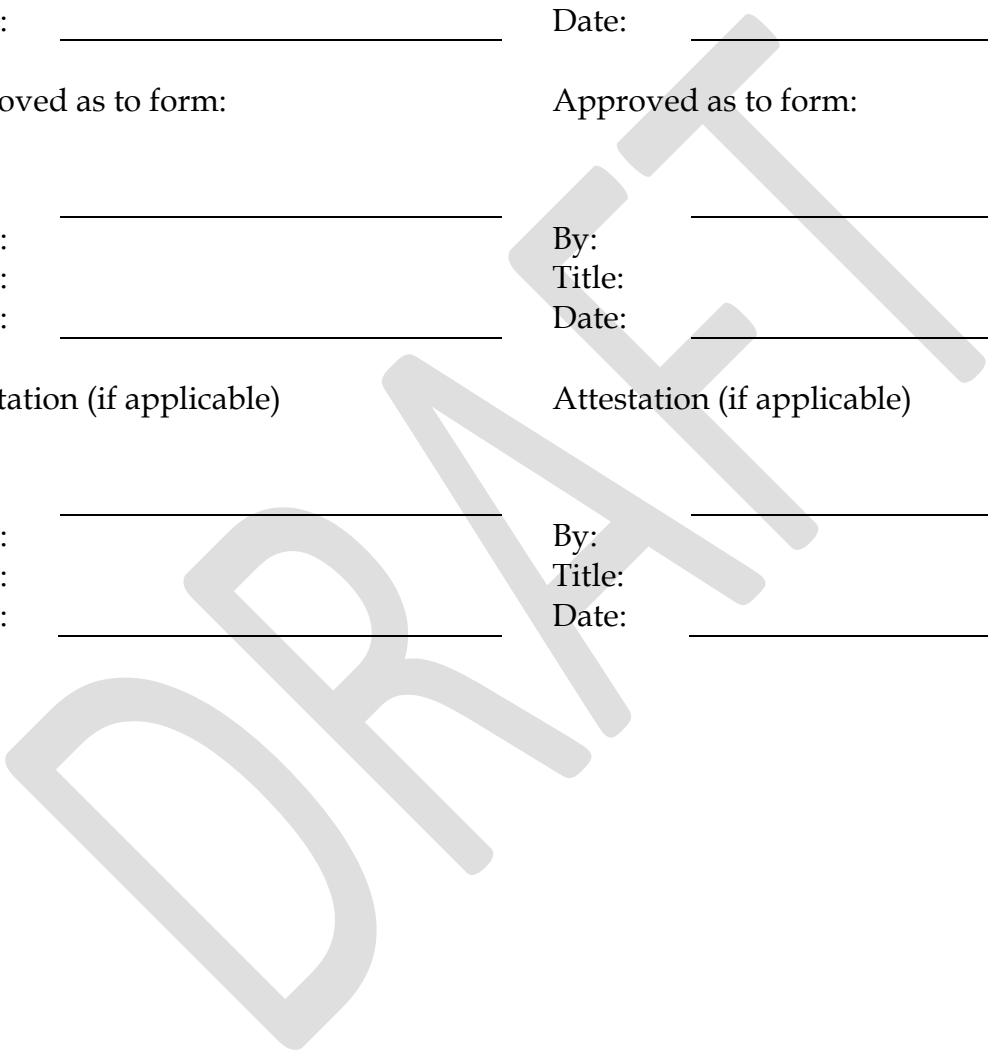
By: _____
Title: _____
Date: _____

Attestation (if applicable)

Attestation (if applicable)

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____



CITY OF REDDING
777 Cypress Avenue
Redding, CA 96001

CITY
S

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Approved as to form:

Approved as to form:

By: _____
Title: _____
Date: _____

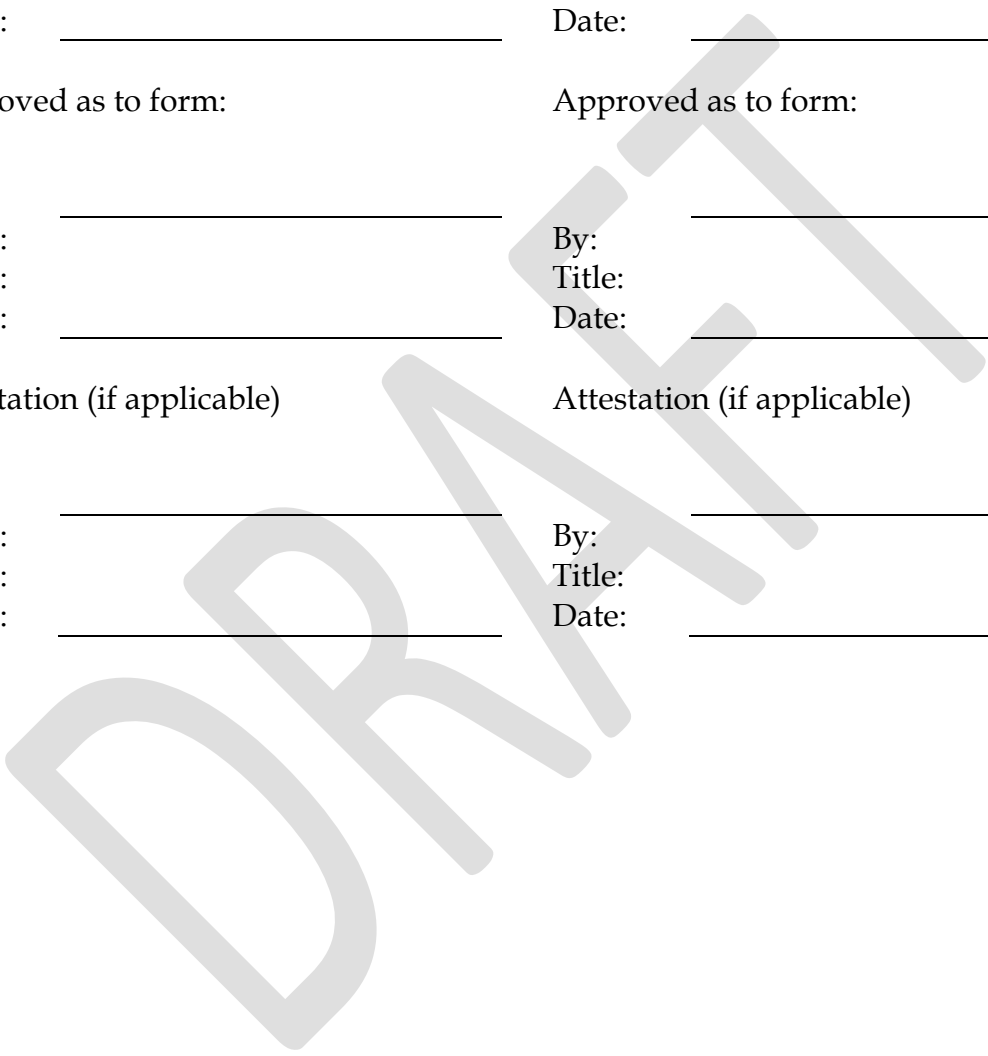
By: _____
Title: _____
Date: _____

Attestation (if applicable)

Attestation (if applicable)

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____



|

DRAFT

EXHIBIT A: CURRENT CT2 MEMBERS

The following is a list of the Current CT2 Members are the Current CT2 Members.

Their respective Initial Project Participation Percentage share of the Project are:

Participant	MW (estimated)	Project Participant Share
Alameda		19.00%
Lodi		39.50%
Lompoc		5.00%
Roseville		36.50
TOTAL		100.00%

DRAFT

EXHIBIT B: FINAL PARTICIPANTS

Effective Date: _____

The following is a list of the Participants who are signatory to this Agreement, and their respective Project Participant Share for this Agreement.

Participant	MW (estimated)	Project Participant Share	Authorized Representative to Serve on the Project Ad Hoc Committee
Alameda			
Lodi			
Lompoc			
Roseville			
TOTAL		100.00%	

EXHIBIT C:

1) .

DRAFT

C-i

SECOND PHASE AGREEMENT FOR NCPA SOLAR PROJECT 1

|

EXHIBIT D:

This

DRAFT



Commission Staff Report

COMMISSION MEETING DATE: November 30, 2023

SUBJECT: Northern California Power Agency Transmission Owner Rate Case Project Implementation; Applicable to the following: All Northern California Power Agency (NCPA) Facilities

AGENDA CATEGORY: Discussion/Action

FROM:	Jane Luckhardt	METHOD OF SELECTION:
	NCPA General Counsel	<i>Competitive Pricing Process</i>
Division:	Executive Services	<i>If other, please describe:</i>
Department:	Legal	

IMPACTED MEMBERS:		
All Members	<input checked="" type="checkbox"/>	
Alameda Municipal Power	<input type="checkbox"/>	City of Lodi <input type="checkbox"/>
San Francisco Bay Area Rapid Transit	<input type="checkbox"/>	City of Lompoc <input type="checkbox"/>
City of Biggs	<input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>
City of Gridley	<input type="checkbox"/>	City of Redding <input type="checkbox"/>
City of Healdsburg	<input type="checkbox"/>	City of Roseville <input type="checkbox"/>
		City of Santa Clara <input type="checkbox"/>
		City of Shasta Lake <input type="checkbox"/>
		City of Ukiah <input type="checkbox"/>
		Plumas-Sierra REC <input type="checkbox"/>
		Port of Oakland <input type="checkbox"/>
		Truckee Donner PUD <input type="checkbox"/>
		Other <input type="checkbox"/>
<i>If other, please specify</i>		

RECOMMENDATION:

Approve Resolution 23-XX authorizing implementation of the Transmission Owner Rate Case Project (Project) for the Northern California Power Agency (NCPA), and delegating authority to the NCPA General Manager, or his designee, to award proposals, execute agreements, and issue purchase orders for the Project, in accordance with NCPA purchasing policies and procedures, without further approval by the Commission, and in conformity with NCPA's annual approved budgets for these services.

BACKGROUND:

The Transmission Agency of Northern California (TANC) has supported through their Program Agreement 6 a focused effort with legal counsel and consultants to reduce the transmission owner charges collected by the California Independent System Operator (CAISO), through the transmission access charge and wheeling access charge. TANC's Program Agreement 6, and the associated efforts, is expiring at the end of 2023.

Based upon the expectation of TANC's termination of their involvement in the transmission owner rate cases, NCPA's Commission previously approved budgeted funds through the Fiscal Year 2024 (FY 2024) budget process to be used for legal and consulting services, focused on active participation and engagement in transmission owner rate cases at the Federal Energy Regulatory Commission (FERC). The Project proposed in this Staff Report is intended to serve as a bridge and vehicle to continue the transmission owner rate case work while NCPA staff works with the members to develop a formal program through which NCPA can actively participate and engage in the transmission owner rate cases and related work.

In order to effectuate these activities, NCPA plans to take the following steps:

1. Obtain Commission approval for funding. Complete, approved, and reflected in FY 2024 Budget (Judicial Action);
2. Obtain approval to enter into contracts, including an amendment to a Multi-Task Professional Services Agreement with Duncan Weinberg Genzer and Pembroke, P.C. (DWGP), issue purchase orders, and bill members according to an approved cost split for funds actually incurred. Approval requested through this Staff Report and the attached Commission Resolution; and
3. Develop and obtain approval of a Transmission Owner Rate Case Program (the "Program"). To be developed by NCPA staff and participating NCPA Members, with focus on Program scope, funding and cost allocation, and general governance.

Although the Program will be developed in consultation with NCPA Member participants, NCPA staff has initially framed the program as described below:

Program Goals and Objectives:

- Minimize the CAISO transmission access charge and wheeling access charge increases; and
- Prioritize NCPA Member transmission and related projects.

Legal Scope of Work: The legal scope of work for the Project will include the following at levels agreed upon in an overarching implementation plan, with specific pieces of work approved as limited by issues, budget and time.

- Transmission Owner Rate Cases – in coordination with other similarly focused entities such as the California Public Utilities Commission, the Six Cities, the California Department of Water Resources and TANC, so that the work for NCPA is not duplicative of work conducted by or for other entities, DWGP will be assigned on NCPA's behalf to participate in the following types of proceedings and obtain expert support as needed and approved in advance:
 - FERC Transmission Owner Rate Cases
 - Pacific Gas and Electric Company (PG&E) – focus on low voltage and high voltage
 - Southern California Edison – focus on high voltage
 - San Diego Gas and Electric Company – focus on high voltage
 - Private transmission developers – focus on specific high value or precedential issues
 - Create and provide short summaries of activities, including why these activities are important to the Project participants
 - Other proceedings as specifically approved by the Project participants

Technical Proceedings Scope of Work: The technical proceedings scope of work will focus on NCPA's longstanding identification of costs driven by PG&E's self-approved projects and the California Independent System Operator's (CAISO) transmission planning process and generator interconnection process.

- Technical support for NCPA staff in the California Public Utilities Commission Transmission Project Review process (TPR), formerly the STAR process. (NCPA forced PG&E to agree to the Stakeholder Transmission Asset Review process ("STAR") after filing a 206 Complaint against PG&E at FERC). NCPA staff is currently and will remain assigned to this process. As needed, NCPA staff will seeking technical consulting support (e.g., power flow analyses and related expertise).
- Technical support for the CAISO's Transmission Planning Process (TPP) and CAISO Generator Interconnection Process (GIP). NCPA staff is currently following the TPP and GIP. NCPA staff is also working with the CAISO to ensure NCPA projects can be interconnected to the CAISO controlled grid. In addition, CAISO is currently modifying its transmission interconnection process to conform to a FERC decision on generator interconnections. The result of these proceedings may require NCPA to formally submit projects into the TPP and/or GIP for analysis. Thus, NCPA will need to obtain transmission and distribution modeling support, including power flow analyses to ensure NCPA projects can be analyzed and interconnected without excessive cost uplifts and within a reasonable timeframe.
- As with the legal scope of work, NCPA staff and the Project participants will develop a budget and scope for this work.

Project Governance and Structure: To provide timely direction for these proceedings and associated efforts, including budget and scope, NCPA staff proposes to create a small ad hoc working group comprised of Project participants willing to meet quarterly (or as needed) to provide direction.

Contracting: as a result of the procurement process described herein below, on October 31, 2023, NCPA entered into a three-year Legal Services Agreement with DWGP for legal services related to transmission owner rate case legal services in the amount not-to-exceed \$50,000. Going forward, NCPA expects to amend the agreement to increase the not-to-exceed amount, extend the term to five years, and modify the scope of services as a component of this Project and the Program that will be developed in the future.

FISCAL IMPACT:

Funding for legal services in support of the Project, and subsequent Program, are included in the approved FY 2024 Legal budget under FERC Rate Cases (Account Code 923-004-009-115-043-000) in the amount of \$300,000, together with funds for consulting services in support of the Transmission Owner Rate Case Project, and subsequent Program, are also including in the approved FY 2024 budget (Account Code 923-004-009-115-044-000) in the amount of \$300,000.

NCPA staff proposes to charge the fees for this Project, and the subsequent Program, using the following cost allocation percentages. This cost split is based upon load ratio share of energy delivered as further described in Section D of the NCPA FY 2024 budget that was previously approved by the Commission:

Member	Energy Delivered	
	MWh ¹	Share %
Alameda	346,469	4.82%
BART	375,577	5.23%
Biggs	14,754	0.21%
Gridley	32,972	0.46%
Healdsburg	71,450	0.99%
Lodi	457,946	6.37%
Lompoc	135,766	1.89%
Palo Alto	848,848	11.82%
Plumas Sierra	155,671	2.17%
Port of Oakland	117,803	1.64%
Santa Clara	4,516,186	62.87%
Ukiah	110,257	1.53%
Total	7,183,699	100.00%

Note 1: Source NCPA FY 2024 Budget; Page D-4

(Table based on Energy Delivered MWh billing determinate contained in Section D-4 of the FY 2024 NCPA Annual Budget.)

SELECTION PROCESS:

NCPA General Counsel Jane Luckhardt released a Request for Qualifications and Proposals for Transmission Rate Case Program legal services (RFQ) on August 17, 2023. The RFQ was sent to four law firms which provide these services. On August 17, 2023, NCPA dispatched Addendum No.1 to the RFQ to the four potential proposers to respond to a question raised. On September 15, 2023, two firms submitted proposals in response to the RFQ. Formal interviews of both firms were held on October 25, 2023, with an interview panel consisting of NCPA management and two-member legal representatives. DWGP was selected to represent NCPA in the transmission owner rate cases.

ENVIRONMENTAL ANALYSIS:

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a “project” for purposes of Section 21065 of the California Environmental Quality Act. No environmental review is necessary.

COMMITTEE REVIEW:

This matter will be reviewed by the Facilities Committee on November 1, 2023. It will also be reviewed by the Legal Committee on November 2, 2023.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (3):

- Resolution 23-XX