



12745 N. Thornton Road  
Lodi, CA 95242

phone (209) 333-6370  
fax (209) 333-6374  
web www.ncpa.com

## LEC PPC Agenda

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**Date:** January 3, 2019

**Subject:** January 7, 2019 Lodi Energy Center Project Participant Committee Meeting

**Location:** 12745 N. Thornton Road, Lodi, CA and/or Posted Teleconference Locations

**Time:** 10:00 a.m.

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\*\*\* 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 this notice 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.

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NCPA 651 Commerce Drive Roseville, CA 95678	NCPA 12745 N. Thornton Road Lodi, CA 95241	CITY OF HEALDSBURG 401 Grove Street Healdsburg, CA 95448
BAY AREA RAPID TRANSIT 300 Lakeside Drive, 16 <sup>th</sup> Floor Oakland, CA 94612	CITY OF GRIDLEY 685 Kentucky Street Gridley, CA 95948	CITY OF LOMPOC 100 Civic Center Plaza Lompoc, CA 93438
CITY OF BIGGS 465 "C" Street Biggs, CA 95917	PLUMAS-SIERRA RURAL ELECTRIC COOP 73233 Highway 70 Portola, CA 96122	POWER & WATER RESOURCES POOLING AUTHORITY 106 Polo Rd Glenwood Springs, CO 81601
CALIFORNIA DEPARTMENT OF WATER RESOURCES 2135 Butano Drive, Suite 100 Sacramento, CA 95825	SILICON VALLEY POWER/CITY OF SANTA CLARA 1500 Warburton Avenue, Santa Clara, CA 95050	CITY OF UKIAH 300 Seminary Avenue Ukiah, CA 95482
CITY OF AZUSA 729 N. Azusa Avenue Azusa, CA 91702		

*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 Lodi Energy Center Project Participant Committee may take action on any of the items listed on this Agenda regardless of whether the matter appears on the Consent Calendar or is described as an action item, a report, or an information item. If this Agenda is supplemented by staff reports, they are available to the public upon written 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, 651 Commerce Drive, Roseville, CA or [www.ncpa.com](http://www.ncpa.com)*

**1. Call Meeting to Order and Roll Call**

**PUBLIC FORUM**

Any member of the public who desires to address the Lodi Energy Center Project Participant Committee on any item considered by the Lodi Energy Center Project Participant 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 Lodi Energy Center Project Participant Committee on any item within the jurisdiction of the Lodi Energy Center Project Participant Committee and not listed on the Agenda may do so at this time.

**2. Meeting Minutes – Approval of December 10, 2018 Regular Meeting Minutes**

**MONTHLY REPORTS**

**3. Operational Report for December 2018 – (Jeremy Lawson)**

**4. Market Data Report for December 2018 – Verbal Report (Zakary Liske)**

**5. Monthly Asset Report for November 2018 – (Michael DeBortoli)**

**6. Bidding Strategies Report – Verbal Report and update regarding bidding strategies and regulation down revenues (Jesse Shields)**

**CONSENT CALENDAR**

All items on the Consent Calendar are considered routine and will be approved without discussion by a single roll call vote. Any Project Participant or member of the public may remove any item from the Consent Calendar. If an item is removed, it will be discussed separately following approval of the remainder of the Consent Calendar. Prior to the roll call vote to approve the Consent Calendar, the Participants will be polled to determine if any Participant wishes to abstain from one or more items on the Consent Calendar.

**7. Financial Report for December 2018 – Approve by all Participants**

**8. GHG Reports (excerpted from Monthly ARB) – Accept by all Participants**

**9. Schneider Electric USA, Inc. MTGSA – Staff is seeking a recommendation for approval of a five-year Multi-Task General Services Agreement with Schneider Electric USA, Inc. for electrical related services, with a not to exceed amount of \$2,000,000, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members.**

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**10. Irani Engineering, Inc. MTCSA** – Staff is seeking a recommendation for approval of a five-year Multi-Task Consulting Services Agreement with Irani Engineering, Inc. for injection well related consulting services, with a not to exceed amount of \$2,000,000, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members.

**11. Pullman Heating and Cooling MTGSA** – Staff is seeking a recommendation for approval of a five-year Multi-Task General Services Agreement with Pullman Heating and Cooling for heating, ventilation, and HVAC services, with a not to exceed amount of \$500,000, for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members.

Consent Items pulled for discussion: \_\_\_\_\_

### **BUSINESS ACTION ITEMS**

**12. Appointment of New Vice Chair for LEC PPC** – Election of a new Vice Chairperson for the LEC Project Participant Committee.

### **CLOSED SESSION**

**13. Conference with Legal Counsel** – Existing litigation pursuant to California Government Code Section 54956.9(d)(1): One case:

- a. Pacific Gas and Electric Company's (U 39 G) 2019 Gas Transmission and Storage Rate Case, *Application of Pacific Gas and Electric Company Proposing Cost of Service and Rates for Gas Transmission and Storage Services for the Period 2019 – 2021*, California Public Utilities Commission Application 17-11-009 (filed November 17, 2017).

### **INFORMATIONAL/ DISCUSSION ITEMS**

**14. NCPA NDA for Confidential Information and License to Use Intellectual Property** – Staff will present proposed updates to NCPA's Agreement Regarding the Use and Non-Disclosure of Confidential Information and License to Use Intellectual Property (NCPA NDA).

**15. Additional Operational Updates** – Staff will provide an update on issues related to Operations.

### **ADJOURNMENT**

Next Regular Meeting: Monday, February 11, 2019 at 10:00 a.m.

*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.*



651 Commerce Drive  
Roseville, CA 95678

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

# LEC PPC Meeting Minutes

**Date:** December 10, 2018

**Time:** 10:00 a.m.

**Location:** Lodi Energy Center – 12745 N. Thornton Rd, Lodi, CA 95242 and by teleconference

**Subject:** Lodi Energy Center Project Participant Committee Meeting

## 1. Call Meeting to Order and Roll Call

The PPC meeting was called to order at 10:00 a.m. by Chairman Martin Caballero. He asked that roll be called for the Project Participants as listed below.

PPC Meeting Attendance Summary		
Participant	Attendance	Particulars / GES
Azusa - Robledo	Present	2.7857%
BART - Lloyd	Absent	6.6000%
Biggs - Sorenson	Present	0.2679%
CDWR - Alqaser	Present	33.5000%
Gridley - Borges	Present	1.9643%
Healdsburg - Crowley	Absent	1.6428%
Lodi - Chiang	Present	9.5000%
Lompoc - Singh	Absent	2.0357%
MID - Caballero	Present	10.7143%
Plumas-Sierra - Brozo	Absent	0.7857%
PWRPA - Bradley	Absent	2.6679%
SVP - Hance	Present	25.7500%
Ukiah - Grandi	Absent	1.7857%
Summary		
Present	7	84.4822%
Absent	6	15.5178%
Quorum by #:	Yes	
Quorum by GES:	Yes	
Meeting Date:	December 10, 2018	

## **Public Forum**

Chairman Caballero asked if any members of the public were present in Lodi or at any of the other noticed meeting locations who would like to address the PPC on any agenda items or on any item within the jurisdiction of the LEC PPC and not listed on the agenda. No members of the public were present.

## **2. Meeting Minutes**

The draft minutes from the November 5, 2018 Regular Meeting were considered. The LEC PPC considered the following motion:

**Date:** 12/10/2018

**Motion:** The PPC approves the minutes from the November 5, 2018 Regular Meeting as presented or *including any edits discussed at today's meeting.*

**Moved by:** Santa Clara

**Seconded by:** CDWR

**Discussion:** There was no further discussion.

Vote Summary on Motion		
Participant	Vote	Particulars / GES
Azusa	Yes	2.7857%
BART	Absent	6.6000%
Biggs	Yes	0.2679%
CDWR	Yes	33.5000%
Gridley	Yes	1.9643%
Healdsburg	Absent	1.6428%
Lodi	Yes	9.5000%
Lompoc	Absent	2.0357%
Modesto	Yes	10.7143%
Plumas-Sierra	Absent	0.7857%
PWRPA	Absent	2.6679%
Silicon Valley Power	Yes	25.7500%
Ukiah	Absent	1.7857%
Vote Summary		
Total Ayes	7	84.4822%
Total Noes	0	0.0000%
Total Abstain	0	0.0000%
Total Absent	6	15.5178%
Result:		Motion Passes

## **MONTHLY REPORTS**

### **3. Operational Reports for November 2018**

Jeremy Lawson presented the Operational Report for November 2018. There were no OSHA recordable accidents, and no NERC/WECC or permit violations. There were three forced outages in the month of November. The first outage occurred on 11/11/18 and lasted approximately 1:40; this outage was a result of LEC tripping on start-up due to an auxiliary boiler issue. The second outage occurred on 11/21/18 and lasted 2 hours; this outage was caused by technician error. The third outage occurred on 11/24/18 and lasted approximately 19 hours; LEC was out while staff changed the LEC inlet filters, which had become clogged due to the severe wildfire smoke experienced earlier in the month due to the Campfire. There are no changes to the 2018 outage schedule.

The operational report reflected monthly production of 158,597 MWH, 585 service hours, and equivalent operating availability of 100%. The report set for the Capacity Factor @ 302MW Pmax of 72.8%. There were 4 hot starts, 6 warm starts, and 1 cold start during the month.

### **4. Market Data Report for November 2018**

Zack Liske presented the operating and financial settlement results for the month. LEC was committed to CAISO 28 out of 30 available days. Zack also reviewed the RAIM incentive payments for the month of November 2018. There were twenty-four 24-hour runs in the month of November, with most other runs in the 12-17 hour range. Zack reviewed the CAISO Commitment runs and LEC Margins with the Committee.

### **5. Monthly Asset Report**

Mike DeBortoli presented the monthly asset report for October 2018. Mike reported that the plant was running slightly under forecast (in terms of fixed-costs). The new market forecast from January appears to be favorable. Mike reviewed the monthly historical comparisons as well as the 12-month history.

### **6. Bidding Strategies Report**

Ken Goeke presented the Bidding Strategies Report for November 2018. Ken reviewed bidding and calculating net start-up costs. Ken reviewed DA and RT net revenues over the month with the Committee.

### **Consent Calendar (Items 7 – 9)**

The consent calendar was considered. Chairman Caballero asked if any Participant wished to have any item removed for separate discussion. Hearing no requests, he then asked if any Participant wished to abstain from one or more items on the Consent Calendar. There were no abstentions. The LEC PPC considered the following motion:

**Date:** 12/10/2018

**Motion:** The PPC approves the Consent Calendar items consisting of agenda items no. **7.** Treasurer's Report for October 2018 and November 2018; **8.** Financial Report for October 2018 and November 2018; **9.** GHG Reports (excerpted from Monthly ARB)

**Moved by:**  
**Seconded by:**

**Lodi**  
**CDWR**

Discussion:. There was no further discussion.

Vote Summary on Motion		
Participant	Vote	Particulars / GES
Azusa	Yes	2.7857%
BART	Absent	6.6000%
Biggs	Yes	0.2679%
CDWR	Yes	33.5000%
Gridley	Yes	1.9643%
Healdsburg	Absent	1.6428%
Lodi	Yes	9.5000%
Lompoc	Absent	2.0357%
Modesto	Yes	10.7143%
Plumas-Sierra	Absent	0.7857%
PWRPA	Yes	2.6679%
Silicon Valley Power	Yes	25.7500%
Ukiah	Absent	1.7857%
Vote Summary		
Total Ayes	8	87.1501%
Total Noes	0	0.0000%
Total Abstain	0	0.0000%
Total Absent	5	12.8499%
Result:	Motion Passes	

## **BUSINESS ACTION ITEMS**

### **10. LEC Spring Outage Project**

Mike DeBortoli reviewed the April 2019 Outage costs, including the budget for the project. Mike outlined his plans to use some of the funds remaining from the Transmission Project during the outage to cover some of the unexpected projects, which includes work on the injection well, condenser erosion, and stack probe. These unexpected projects will cost approximately \$560,060 of the remaining \$1,644,202 Transmission Project funds, so Mike has proposed that the remaining balance be used as a contribution for GSU. The LEC PPC considered the following motion:

**Date:** 12/10/2018

**Motion:** The PPC approves authorization for the NCPA General Manager to execute agreements and issue purchase orders for maintenance work

related to the Lodi Energy Center (LEC) 2019 Spring Outage, for a not cost not to exceed \$2,276,00 and for NCPA to hold remaining Transmission Project funds for consideration of the GSU replacement.

**Moved by:** Lodi

**Seconded by:** CDWR

Discussion: There was no further discussion

<b>Vote Summary on Motion</b>		
<b>Participant</b>	<b>Vote</b>	<b>Particulars / GES</b>
Azusa	Yes	2.7857%
BART	Absent	6.6000%
Biggs	Yes	0.2679%
CDWR	Yes	33.5000%
Gridley	Yes	1.9643%
Healdsburg	Absent	1.6428%
Lodi	Yes	9.5000%
Lompoc	Absent	2.0357%
Modesto	Yes	10.7143%
Plumas-Sierra	Absent	0.7857%
PWRPA	Yes	2.6679%
Silicon Valley Power	Yes	25.7500%
Ukiah	Absent	1.7857%
<b>Vote Summary</b>		
Total Ayes	8	87.1501%
Total Noes	0	0.0000%
Total Abstain	0	0.0000%
Total Absent	5	12.8499%
Result:		Motion Passes

## **CLOSED SESSION**

### **11. Adjourned to Closed Session**

The PPC adjourned to Closed Session at 10:27 a.m. A Closed Session discussion was had pursuant to California Government Code Section 54956.9(d)(1) regarding Pacific Gas and Electric Company's 2019 Gas Transmission and Storage Rate Case, *Application of Pacific Gas and Electric Company Proposing Cost of Service and Rates for Gas Transmission and Storage Services for the Period 2019 – 2021*, California Public Utilities Commission Application 17-11-009 (filed November 17, 2017).



At 10:33 a.m. the Committee returned to Open Session. General Counsel Jane Luckhardt advised that no reportable action was taken during the Closed Session.

## **INFORMATIONAL ITEMS**

### **12. Siemens Upgrade Options**

Mike DeBortoli outlined an optional upgrade being offered by Siemens for the LEC Combustion Turbine. Siemens has made all upgrades backwards-compatible. The proposed upgrade to the rotor could correct a potentially significant event from occurring in the air separator. If a significant even did occur, it could result in failure of the turbine; the odds of this event occurring are low. While the new rotor design addresses this issue, there could be other, unknown issues associated with the new design.

Mike reviewed some of the features of the new hybrid rotor design and highlighted some potential baseload and peak fire improvements. He noted that these performance improvements were preliminary estimates. There could also be improvements to the ramp rate.

The cost to upgrade to the new rotor design would range from \$4mm - \$8mm. Mike would like to gauge the general interest level of the Committee in further exploring this option. Ken Speer stated it would be helpful to have a better idea of potential fuel benefits associated with this upgrade. Mike stated he would send out some data to the Committee regarding the increased efficiency/capacity before the next LEC PPC meeting. Mike will circle back with the Committee in the next meeting for further direction related to this proposed upgrade.

### **13. Additional Operational Updates**

There were no additional operational updates at this time.

## **Adjournment**

The next regular meeting of the PPC is scheduled for Monday, January 7, 2019.

The meeting was adjourned at 10:45 a.m.

Submitted by: Michelle Schellentrager

# **Lodi Energy Center Project Participant Committee**

## **Operational Report**

**Agenda Item No.: 3**

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**Date:** 12/31/2018

**To:** Lodi Energy Center Project Participant Committee

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### **Safety**

- OSHA Recordable: 0 Accidents.

### **Notice of Violations**

- Permits: 0 Violations Issued.
- NERC/WECC: 0 Violations Issued.

### **Outage Summaries:**

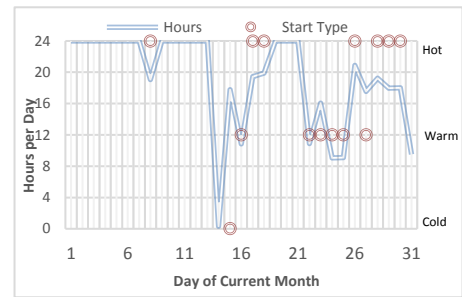
- 12/14/18 – 5:29 hours forced out, LEC server faults. Shutdown to replace server.
- 12/16/18 - 1 hours delayed start. Aux boiler superheater tripped.

### **Planned Outage Summaries:**

- 2019 April – Generator Inspections, Main Transformer Inspections, and DCS Upgrade
- 2021/2022 CT – Major Inspection (6 weeks outage)

**Generating Unit Statistics:****Date:** 12/1/2018

1. Monthly Production	162,717	MWH
2. Productivity Factor		
a. Service Hours	596	Hours
b. Service Factor	81.3	%
c. Capacity Factor @ 302MW Pmax	73.6	%
3. Equivalent Operating Availability (EOA)	99.0	%
4. Forced Outage Rate (FOR)	1.2	%



## 5. Heat Rate Deviation

a. Fuel Cost (Not Current Market Price)

4.00 \$/mmBTU

MW Range	PMOA HR BTU/kW- Hr	Average HR BTU/kW-Hr	Deviation %	Production MWH	Cost \$
Seg. 1 296 +	6850	0	0.00%	0	\$0
Seg. 2 284 - 296	6870	6,969	1.45%	142	\$57
Seg. 3 275 - 284	6971	6,964	-0.10%	2,347	-\$64
Seg. 4 250 - 275	7081	6,999	-1.16%	16,315	-\$5,376
Seg. 5 225 - 250	7130	7,044	-1.20%	4,693	-\$1,606
Seg. 6 200 - 225	7200	7,156	-0.62%	2,953	-\$524
Seg. 7 175 - 225	7450	7,475	0.33%	3,800	\$378
Seg. 8 165 - 175	7760	7,790	0.39%	1,948	\$238
	7,164	7,200	-0.39%	32,197	-\$6,898

## 6. AGC Control Deviation

MW Range	High Dev MWH	Low Dev MWH	Total Dev MWH	Cost \$
Seg. 1 296 +	0	0	0	\$0
Seg. 2 284 - 296	358	-37	395	\$11,003
Seg. 3 275 - 284	138	-71	209	\$5,814
Seg. 4 250 - 275	59	-26	85	\$2,389
Seg. 5 225 - 250	22	-16	39	\$1,088
Seg. 6 200 - 225	12	-18	31	\$876
Seg. 7 175 - 225	9	-26	35	\$1,056
Seg. 8 165 - 175	2	-4	5	\$158
	599	-199	798	\$22,383

## 7. Starting Reliability

Start Type	Hot Starts	Warm Starts	Cold Starts
Number of Starts	7	6	1
Start Time Benchmark (Minutes)	75	110	200
Start Time Actual (Average Minute)	69	93	70
Start Time Deviation (%)	-8%	-15%	-65%
Start Fuel Benchmark PMOA (mmBTU)	1,300	1,800	3,500
Start Fuel Actual (Average mmBTU)	1,222	1,723	1,243
Fuel Deviation (%)	-6%	-4%	-64%
Costs of Fuel Deviations (\$)	-\$2,192	-\$1,854	-\$9,029

**Definitions:**

1. Monthly Production = Plant Net MWH's
2. Capacity Factor
  - a. Service Hours = In Production or in Service State
  - b. Service Factor =  $SH / PH \times 100\%$
  - c. Capacity Factor =  $Production / 302MW \times PH$
  - d. Capacity Factor =  $Production / 280MW \times PH$
3. Monthly Equivalent Availability Factor (EAF) =  $(AH - EPDH - EFDH) / PH \times 100\%$
4. Forced Outage Rate =  $(FOH / (FOH + SH)) \times 100\%$
5. Heat Rate Deviation (HRD)
  - a. Fuel Cost = Cost of Fuel in \$/mmBTU
  - b. Average Heat Rate = The Average Heat Rate for the given Range
  - c. Heat Rate Deviation =  $(Heat\ Rate\ Average - Heat\ Rate\ Expected) / Heat\ Rate\ Expected \times 100\%$
  - d. Production = The Sum of Production for the given Range
  - e. Costs of Heat Rate Deviations =  $(Average\ Heat\ Rate - Expected\ Heat\ Rate) \times Production \times Cost\ of\ Fuel$
6. AGC Deviation-
  - a. MWH's = AGC Set Point Generation - LEC Actual Generation
  - b. Cost of Deviations = Fuel Cost x Heat Rate x Generation
7. Starting Reliability
  - a. Number of Starts = Start Count for Hot, Warm, and Cold
  - b. Start Time = Average Time from 0 Fuel Flow to Pmin
  - c. Start Fuel = Average Fuel Consumption to Pmin
  - d. Cost of Fuel Deviation =  $(Actual\ Fuel\ Consumed - Expected\ Fuel) \times Cost\ of\ Fuel$

**LEC PPC Meeting  
January 7, 2019  
Market Settlement Results  
for  
December 2018**

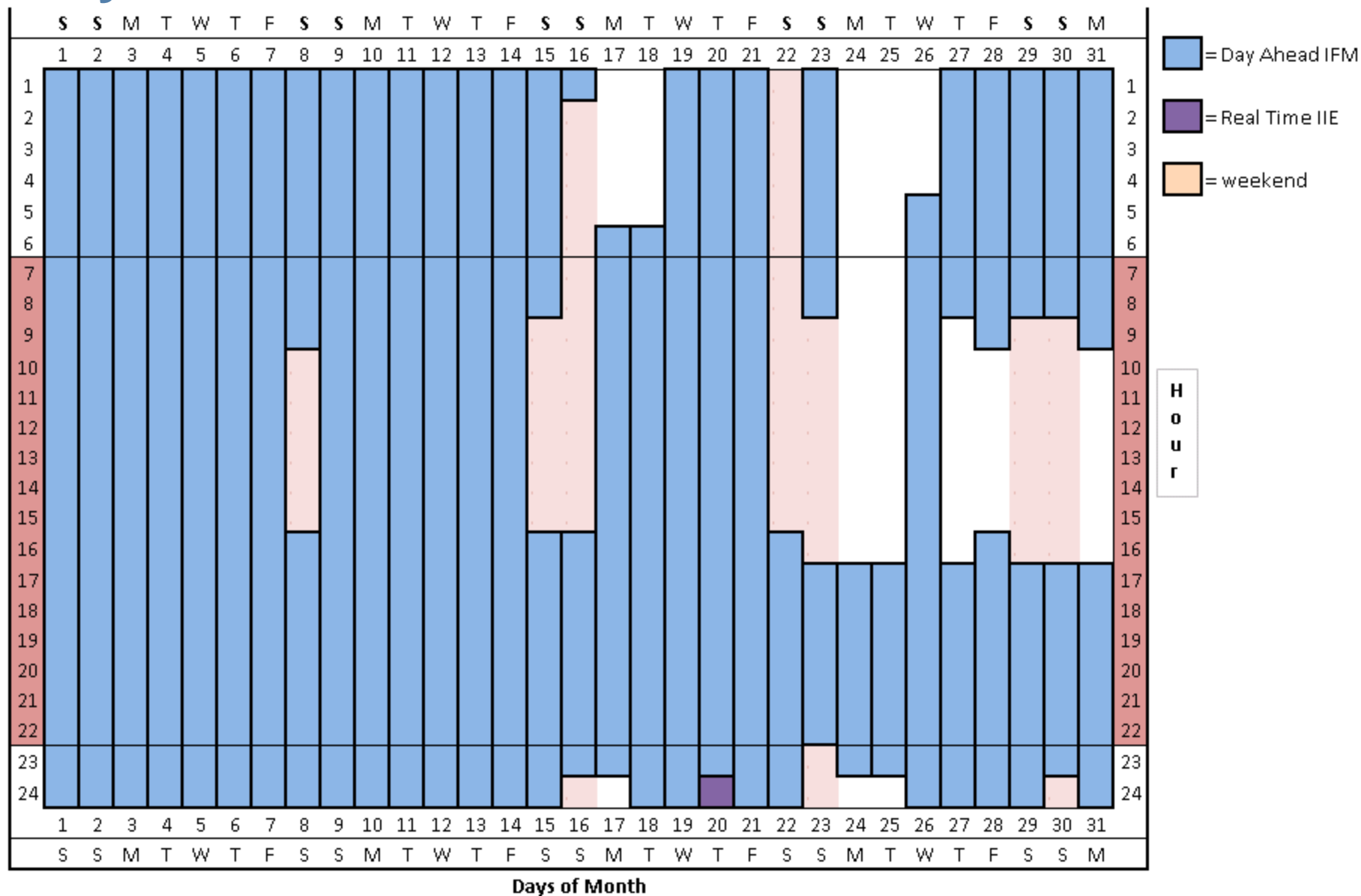
## LEC Operational Results for December 2018

- Resource Adequacy Availability Metrics:
  - 100% - Monthly Assessment Generic Performance
  - 100% - Monthly Assessment Flexible Performance
- Vs
- 96.5% Availability Standard
- Estimated RAAIM Incentive Payment of
  - \$21,400 for Generic RA based on claimed 125.99 mw RA
  - \$500 for Flexible RA based on claimed 3.05 mw RA
- LEC was committed by CAISO for Market energy 31 of 31 available days
  - 0 days not committed due to forced outage
  - 0 days not committed due to economics

# Frequency Tabulation of Daily CAISO commitment hour runs for December 2018

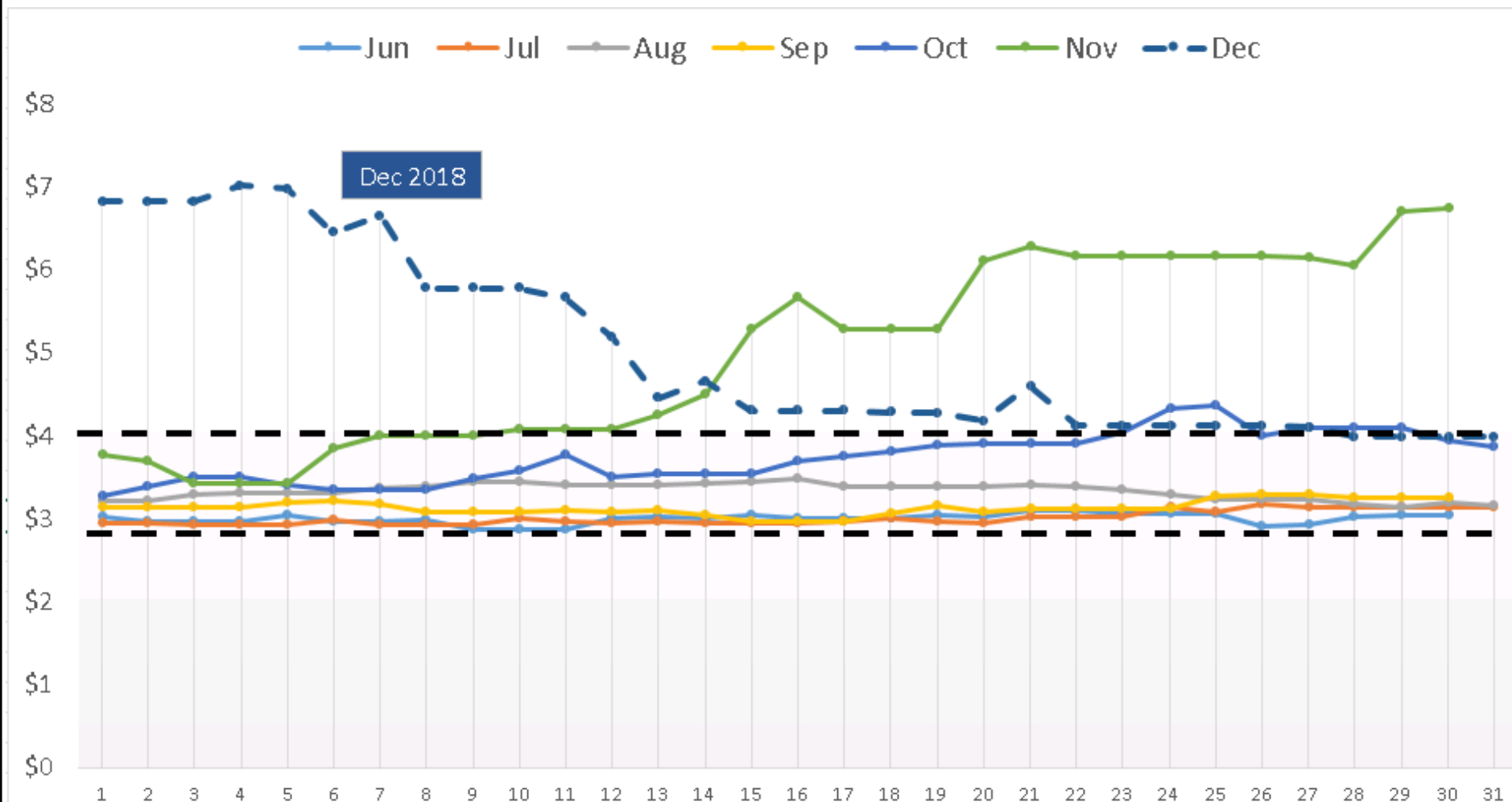


# Daily CAISO Commitment Runs for December 2018



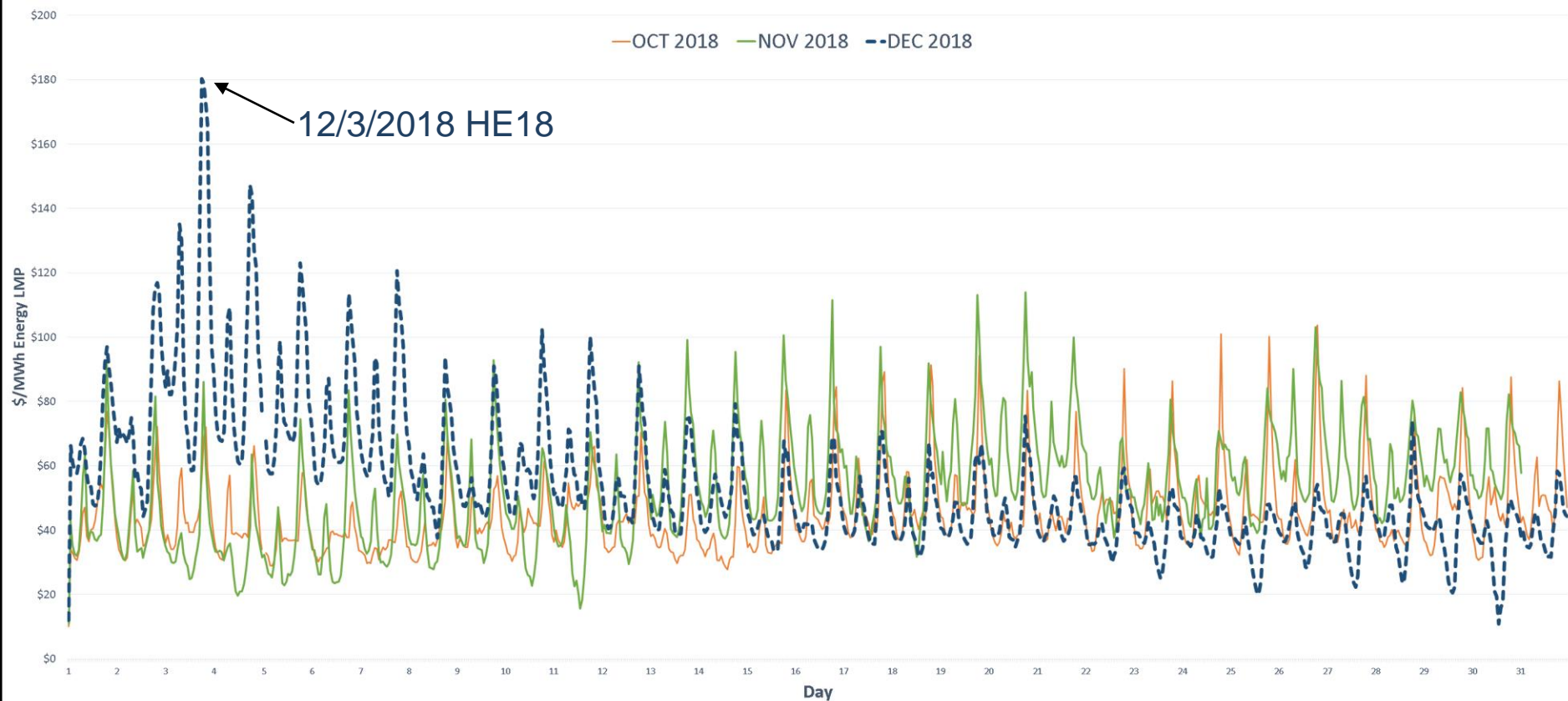


# PG&E CityGate gas prices start the month strong but decline to prior month levels

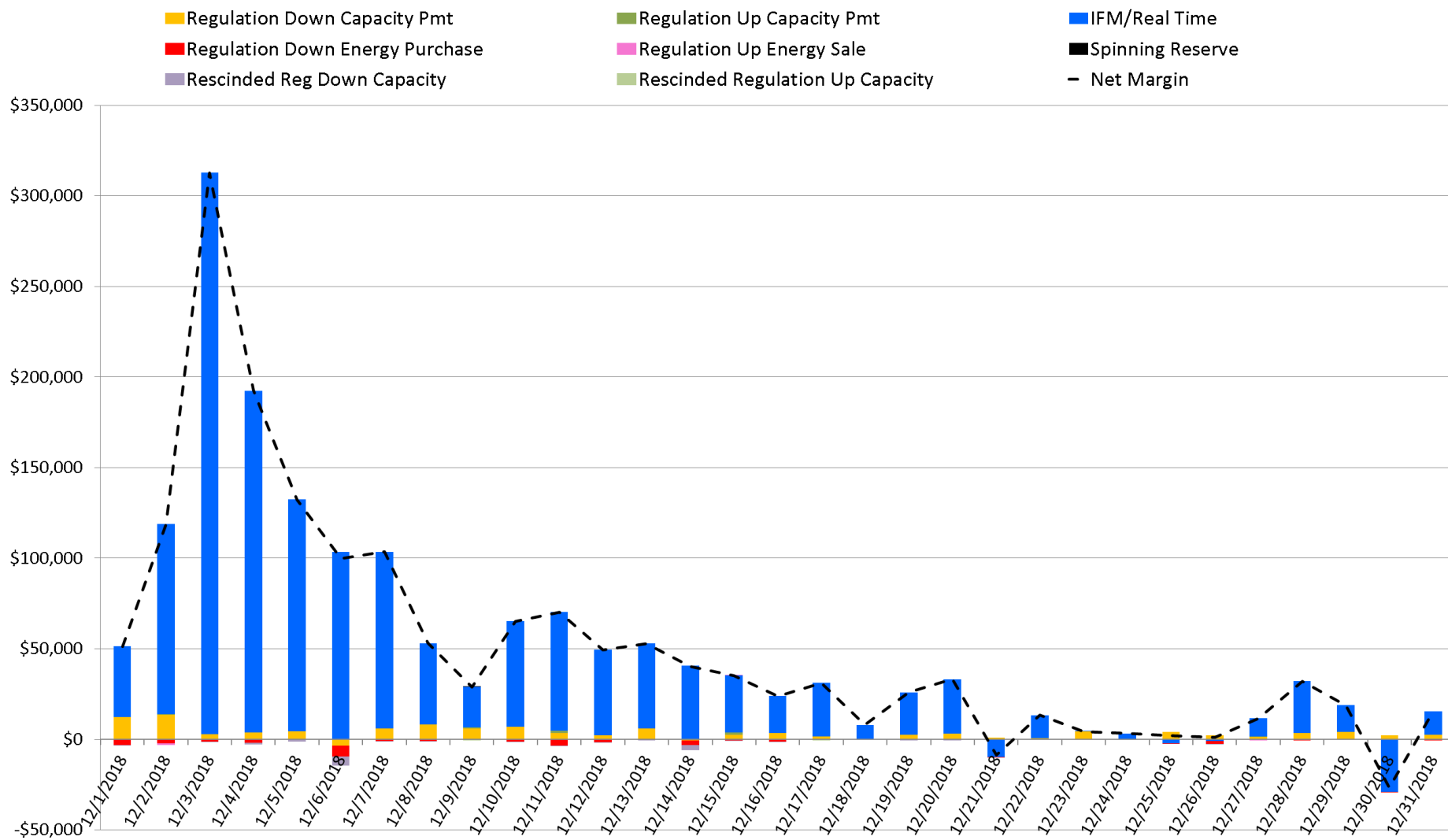


# With high gas prices, LEC Day Ahead energy LMP values soar during first week of December 2018

LEC PROJECT HOURLY DAY AHEAD LMP VALUES FOR 4TH QTR



# December 2018 LEC Daily Margin Profile by Product



## December 2018 LEC Project Cumulative Monthly Margin

IFM/RTM Gross Revenues	\$ 10,179,400	
Regulation Up Capacity	\$ 4,700	
Regulation Down Capacity	\$ 156,600	
Spinning Reserve	\$ -	
Total Gross LEC Revenue		\$ 10,340,700
LEC CAISO GMC Costs	\$ (71,500)	
CAISO Energy & Capacity Buyback Costs	\$ (242,800)	
Total Monthly LEC Fuel Cost	\$ (6,782,000)	
Total Monthly GHG Obligation	\$ (1,000,100)	
Variable Operations & Maintenance Cost	\$ (569,700)	
Total Costs		\$ (8,666,100)
Net Cumulative Monthly Margin		\$ 1,674,600
Average Margin \$/MWh	\$	9.8

# Comparison of Day Ahead Congestion LEC vs NP15 Trade Hub

Net\_Amount by Day

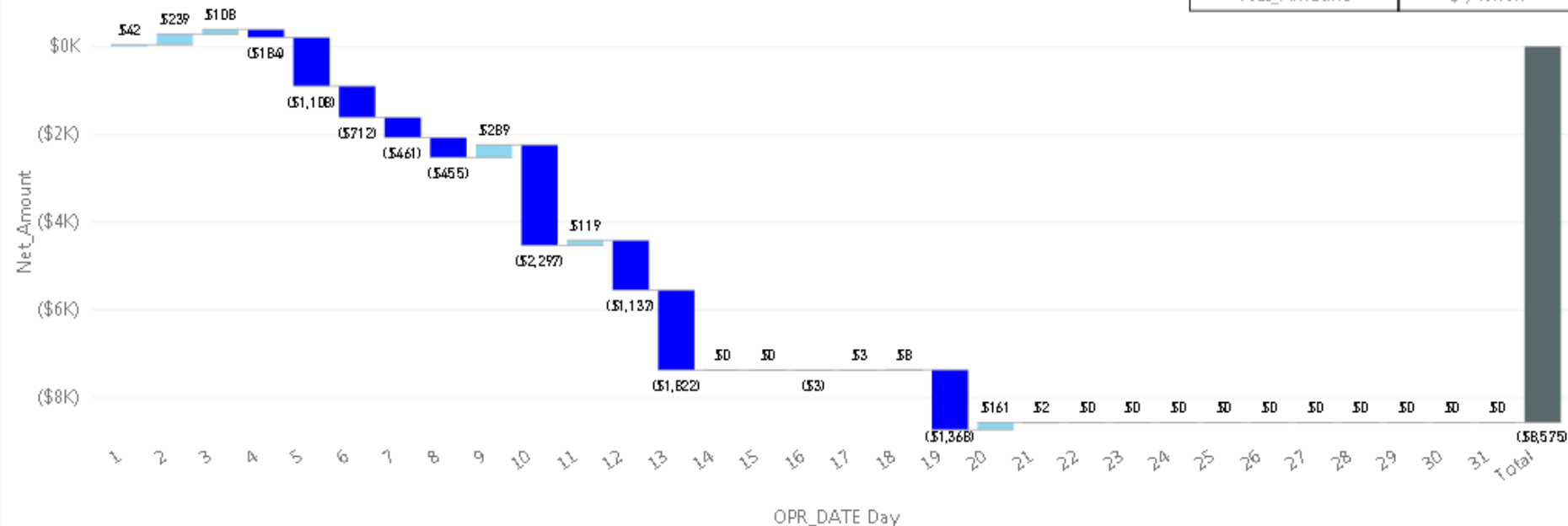
● Increase ● Decrease ● Total

(\$8,575.5)

Net\_Amount

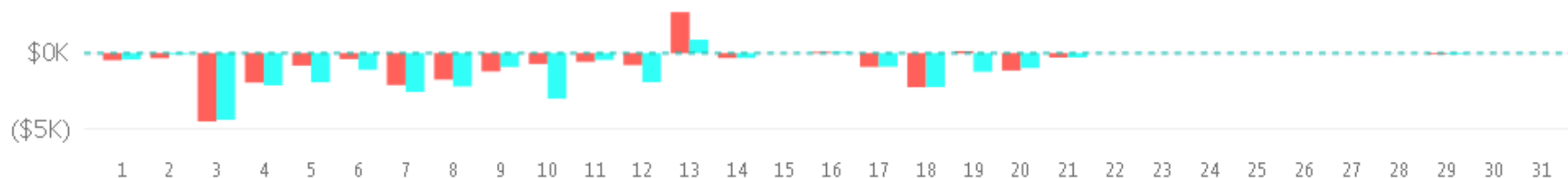
(\$0.05)

\$ / MWh

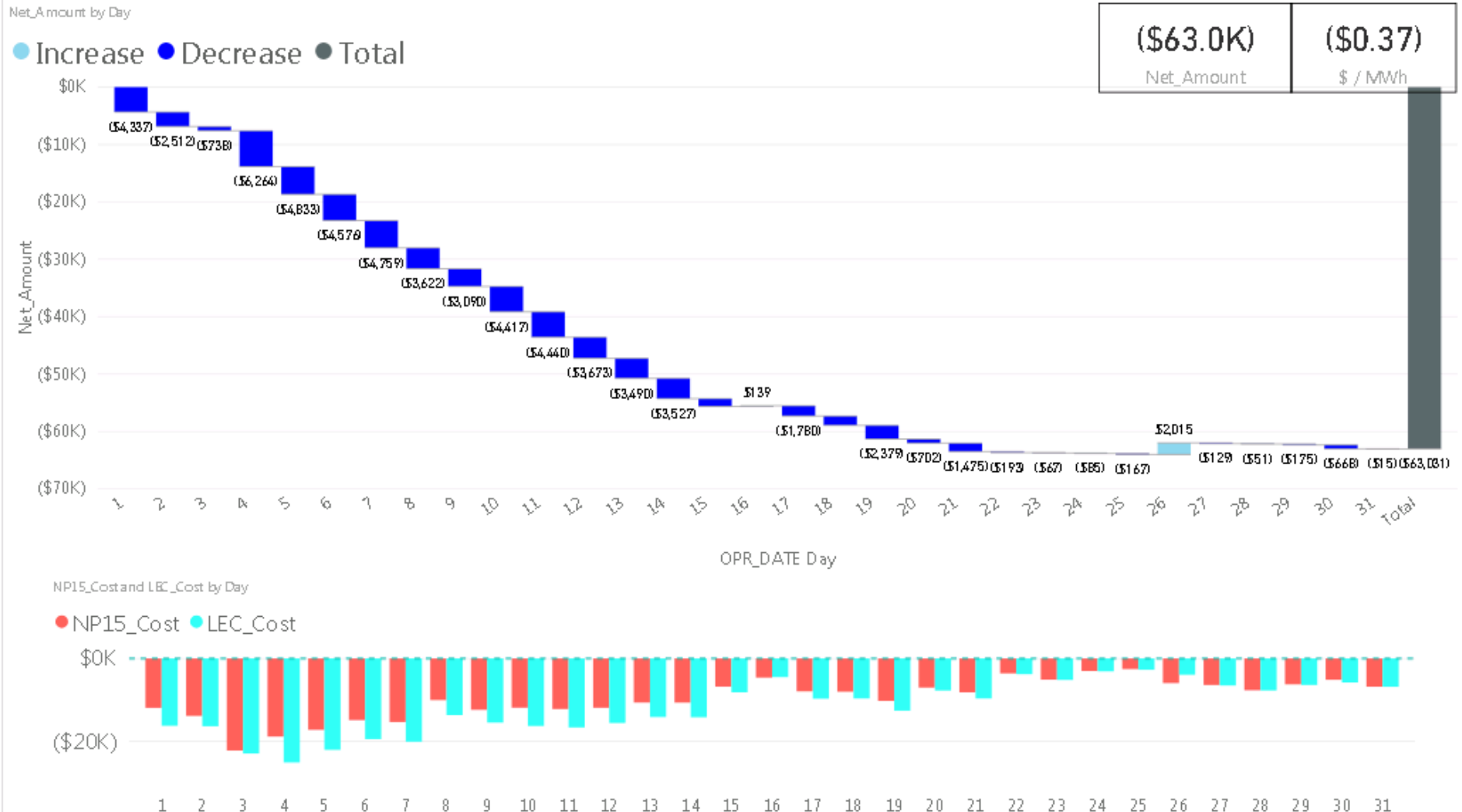


NP15\_Cost and LEC\_Cost by Day

● NP15\_Cost ● LEC\_Cost



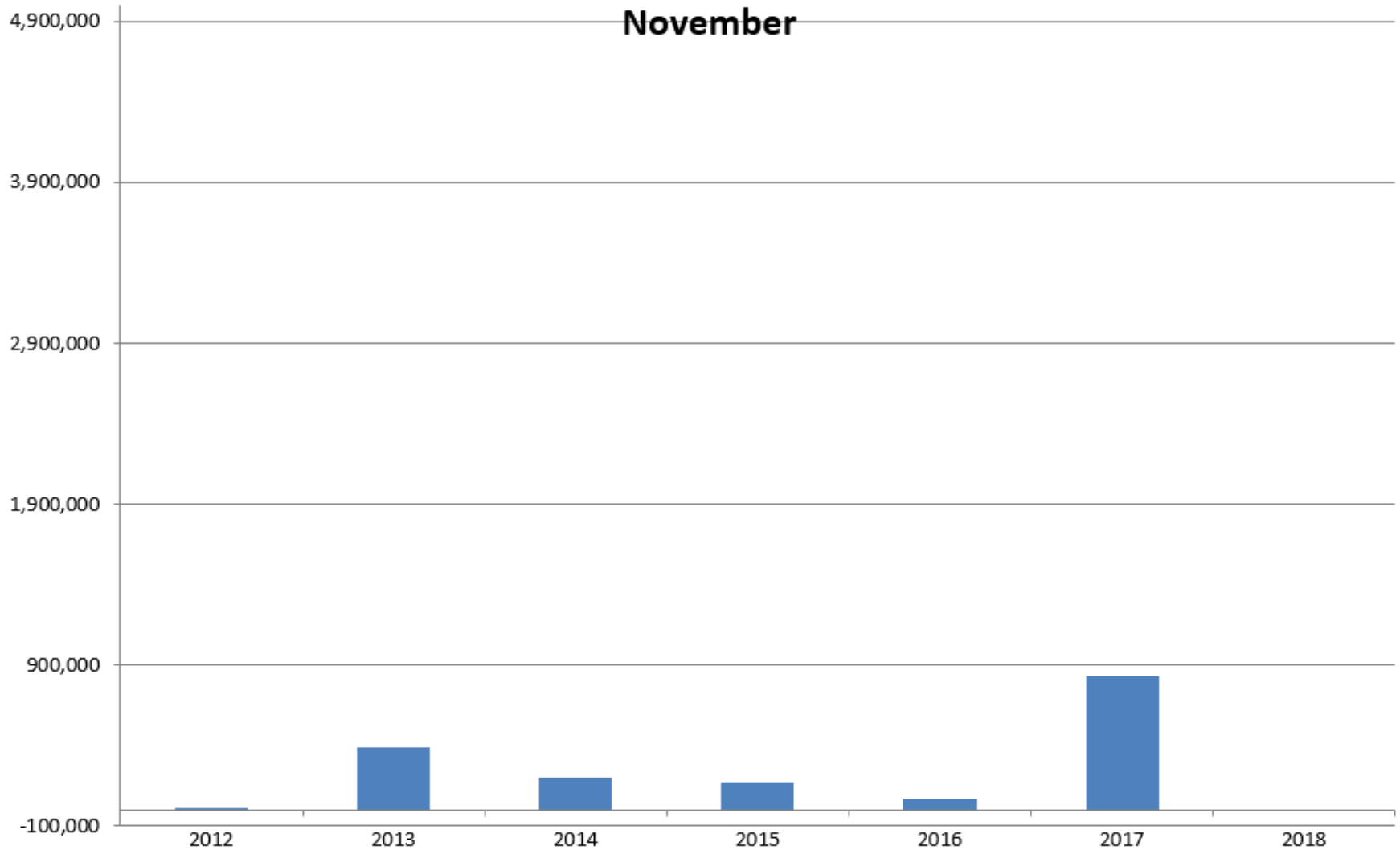
# Comparison of Day Ahead Loss Component LEC vs NP15 Trade Hub



# November Asset Report

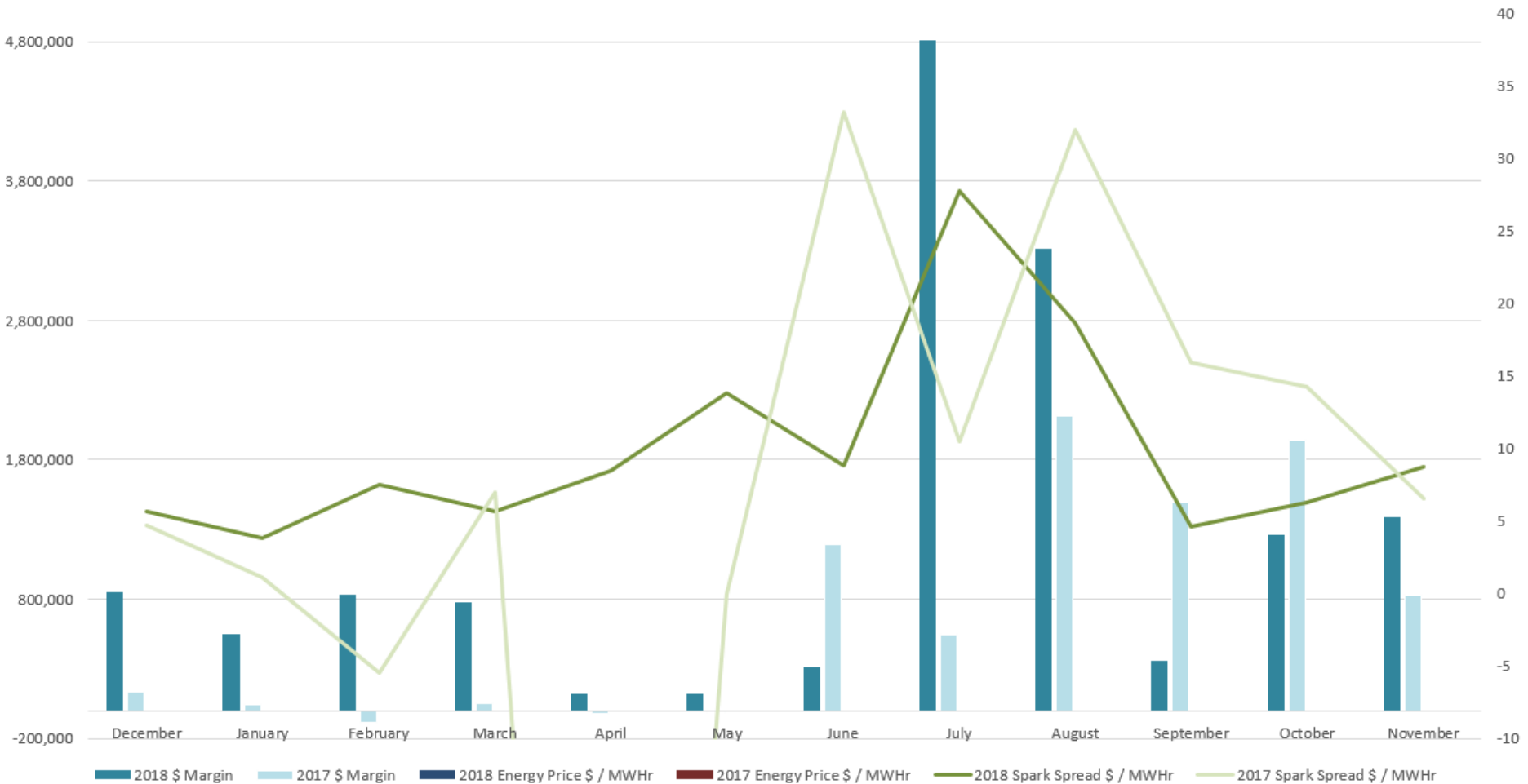
		Most Recent		Above / (below)	Percent Difference	
	Actual	Forecast	Budget	Forecast	Above / (below)	
Revenue	8,983,306	6,956,509	5,166,302	2,026,797	29%	
VOM	7,145,825	5,487,124	4,200,477	1,658,700	30%	Increased Operation / Prices
Fixed	726,713	1,017,333	1,330,321	(290,620)	-29%	
Projects	157,733	121,759	121,759	35,974	30%	
A&G	160,986	212,587	212,587	(51,601)	-24%	
Debt	2,173,321	2,173,321	2,173,321	0	0.00%	
Net Cost	(1,381,272)	(2,055,616)	(2,872,163)	674,344	-33%	
Net Annual Cost		(24,897,220)	(33,714,242)	\$8,817,021		
				Below budget by 26.15%		

# Historical Margins





## Historical Monthly Comparison



Lodi Energy Center  
Monthly Budget Analysis  
Expenditures  
Report Date: 12/31/2018

	July	August	September	October	November	December	January	February	March	April	May	June	Year	FY2017 Budget	Percent Used	Comments
VOM	5,762,637	5,660,582	2,618,769	8,084,394	13,299,544	7,721,742	8,757,034	6,381,157	2,956,883	743,403	1,078,035	5,149,040	68,213,221	45,870,926	148.7%	
Capacity Factor	83%	79%	36%	89%	73%	97%	97%	88%	38%	0%	13%	73%	64%	53%	120.2%	
Fuel Consumed (mmBTU, estimated)	1,236,043	1,270,941	562,033	1,395,938	1,121,029	1,489,505	1,498,095	1,273,011	584,243	0	194,156	1,086,424	11,711,419	8,933,236	131.1%	
Avg Fuel Cost (\$/mmBTU)	3.43	3.75	3.60	4.16	5.49	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.96	3.61	54.4%	
Power Produced (MWhr, estimated)	172,951	177,829	77,574	199,701	158,585	217,446	218,700	185,841	85,291	0	28,344	158,602	1,680,864	1,304,122	128.9%	
Avg Power Price (\$/MWhr)	61.06	54.29	40.01	44.64	56.65	0.00	0.00	0.00	0.00	0.00	0.00	0.00	24.52	39.19	62.6%	
Operations / Variable / LTSA	451,014	-221,653	98,129	1,036,939	6,153,720	297,516	1,342,394	261,312	142,157	743,403	63,795	578,798	10,947,523	4,733,381	231.3%	
Fuel (estimated)	4,238,046	4,768,310	2,024,022	5,809,467	6,153,720	6,130,803	6,082,266	4,987,657	2,295,112	0	841,562	3,601,223	46,932,188	33,092,116	141.8%	Increasead Operations / Higher Prices
AB32 GHG Offset (estimated)	1,003,831	1,038,008	463,974	1,152,683	925,158	1,201,607	1,240,029	1,053,718	483,600	0	160,710	899,273	9,622,592	7,494,769	128.4%	
CA ISO Charges (estimated)	69,746	75,916	32,643	85,305	66,947	91,816	92,345	78,471	36,014	0	11,968	69,746	710,917	550,660	129.1%	
Routine O&M (Fixed)	869,905	798,878	1,084,701	752,948	726,713	1,424,323	798,347	798,347	966,848	1,308,260	999,463	798,347	11,327,079	11,428,728	99.1%	
Maintenance / Fixed	287,217	220,480	343,484	265,716	186,096	217,958	217,958	217,958	375,000	550,000	400,000	217,958	3,499,824	3,443,662	101.6%	
Administration	4,265	1,807	34,753	4,025	4,187	16,412	16,412	16,412	25,000	16,412	16,412	16,412	172,507	205,529	83.9%	
Mandatory Costs	36,157	65,583	36,735	13,580	18,450	10,926	10,926	10,926	10,926	10,926	30,000	10,926	266,062	298,336	89.2%	
Inventory Stock	0	0	0	0	0	0	0	0	0	0	0	0	0	-	0.0%	
Labor	421,755	367,483	538,453	346,372	387,504	422,129	422,129	422,129	425,000	600,000	422,129	422,129	5,197,214	5,284,165	98.4%	
Insurance	0	0	0	-1,713	0	625,976	0	0	0	0	0	0	624,263	625,976	99.7%	
Power Management & Settlements	120,511	120,511	120,511	120,511	120,511	120,511	120,511	120,511	120,511	120,511	120,511	120,511	1,446,133	1,446,134	100.0%	
Other Costs	0	23,014	10,765	4,457	9,965	10,411	10,411	10,411	10,411	10,411	10,411	10,411	121,075	124,926	96.9%	
Projects	121,759	126,805	121,759	121,759	157,733	121,759	121,759	121,759	121,759	221,759	121,759	121,759	1,602,127	1,613,107	99.3%	
Maintenance Reserve	121,759	121,759	121,759	121,759	121,759	121,759	121,759	121,759	121,759	121,759	121,759	121,759	1,461,107	1,461,107	100.0%	
Operations & Maintenance Projects	0	5,046	0	0	35,974	0	0	0	0	0	0	0	41,020	52,000	78.9%	
Capital Projects	0	0	0	0	0	0	0	0	0	100,000	0	0	100,000	100,000	100.0%	
A&G	179,446	187,660	235,600	169,686	160,986	212,587	212,587	212,587	212,587	212,587	212,587	212,587	2,421,486	2,551,043	94.9%	
Administrative & General (Allocated)	158,787	165,944	200,474	149,491	142,070	181,840	181,840	181,840	181,840	181,840	181,840	181,840	2,089,646	2,182,080	95.8%	
Generation Services Shared	20,659	21,716	35,126	20,195	18,916	30,747	30,747	30,747	30,747	30,747	30,747	30,747	331,840	368,963	89.9%	
Total O&M Cost	6,933,747	6,773,925	4,060,829	9,128,787	14,344,976	9,480,410	9,889,726	7,513,850	4,258,076	2,486,008	2,411,844	6,281,733	83,563,913	61,463,804	136.0%	
Debt Service	2,173,321	2,173,321	2,173,321	2,173,321	2,173,321	2,173,321	2,173,321	2,173,321	2,173,321	2,173,321	2,173,321	2,173,321	26,079,852	26,079,852	100.0%	
Revenues	10,560,770	9,655,190	3,103,737	8,914,308	8,983,306	11,466,727	11,699,487	8,763,123	3,509,675	4,331	1,509,301	6,576,590	84,746,545	53,829,414	157.4%	
ISO Energy Sales (estimated)	10,560,770	9,655,190	3,103,737	8,914,249	8,983,306	11,275,200	11,499,457	8,644,758	3,493,763	0	1,483,680	6,538,270	84,152,380	52,414,938	160.6%	Revised Forecast
Other Income	0	0	0	59	0	191,528	200,030	118,366	15,911	4,331	25,621	38,320	594,165	1,414,476		
Net	\$1,453,702	\$707,944	(\$3,130,414)	(\$2,387,800)	(\$7,534,991)	(\$187,004)	(\$363,560)	(\$924,048)	(\$2,921,723)	(\$4,654,998)	(\$3,075,864)	(\$1,878,464)	(\$24,897,220)	(\$33,714,242)	Below budget by 26.15%	



## **Lodi Energy Center Project Participant Committee**

### **LEC Financial Reports**

AGENDA ITEM NO.: 7

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**Date:** January 7, 2019

**To:** Lodi Energy Center Project Participant Committee

**Subject:** December 31, 2018 Financial Reports (Unaudited)

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**NORTHERN CALIFORNIA POWER AGENCY  
LODI ENERGY CENTER  
STATEMENTS OF NET POSITION  
UNAUDITED**

		December	
		2018	2017
<b>ASSETS</b>			
<b>CURRENT ASSETS</b>			
Cash and cash equivalents	\$	73,264	\$ 72,037
Interest receivable		216	168
Inventory and supplies - at average cost		2,110,855	2,110,854
Prepaid insurance		199,926	(47,702)
Due from (to) Agency, net		27,547,706	20,598,269
<b>TOTAL CURRENT ASSETS</b>		<b>29,931,967</b>	<b>22,733,626</b>
<b>RESTRICTED ASSETS</b>			
Cash and cash equivalents		12,042,119	1,790,119
Investments		20,301,232	28,983,247
Interest receivable		159,369	82,206
<b>TOTAL RESTRICTED ASSETS</b>		<b>32,502,720</b>	<b>30,855,572</b>
<b>ELECTRIC PLANT</b>			
Electric plant in service		423,846,087	423,793,167
Less: accumulated depreciation		(88,861,931)	(74,247,389)
		334,984,156	349,545,778
Construction work-in-progress		182,398	107,024
<b>TOTAL ELECTRIC PLANT</b>		<b>335,166,554</b>	<b>349,652,802</b>
<b>OTHER ASSETS</b>			
Unamortized excess cost on advance refunding of debt, net		1,976,377	2,282,654
Regulatory assets		24,478,520	22,733,968
<b>TOTAL OTHER ASSETS</b>		<b>26,454,897</b>	<b>25,016,622</b>
<b>TOTAL ASSETS</b>	<b>\$</b>	<b>424,056,138</b>	<b>\$ 428,258,622</b>

**NORTHERN CALIFORNIA POWER AGENCY  
LODI ENERGY CENTER  
STATEMENTS OF NET POSITION  
UNAUDITED**

	December	
	2018	2017
<b>LIABILITIES &amp; NET POSITION</b>		
<b>CURRENT LIABILITIES</b>		
Accounts and retentions payable	\$ 6,891,443	\$ 3,593,744
Operating reserves	14,159,741	13,376,248
Current portion of long-term debt	11,480,000	10,690,000
Accrued interest payable	1,206,792	1,326,919
<b>TOTAL CURRENT LIABILITIES</b>	<b>33,737,976</b>	<b>28,986,911</b>
<b>NON-CURRENT LIABILITIES</b>		
Operating reserves and other deposits	1,717,141	1,716,002
Long-term debt, net	331,141,571	342,846,635
<b>TOTAL NON-CURRENT LIABILITIES</b>	<b>332,858,712</b>	<b>344,562,637</b>
<b>TOTAL LIABILITIES</b>	<b>366,596,688</b>	<b>373,549,548</b>
<b>DEFERRED INFLOWS OF RESOURCES</b>		
Regulatory credits	40,282,424	41,657,196
<b>NET POSITION</b>		
Invested in capital assets, net of related debt	(19,125,221)	(17,115,161)
Restricted	19,189,231	17,471,030
Unrestricted	17,113,016	12,696,009
<b>TOTAL NET POSITION</b>	<b>17,177,026</b>	<b>13,051,878</b>
<b>TOTAL LIABILITIES AND NET POSITION</b>	<b>\$ 424,056,138</b>	<b>\$ 428,258,622</b>

**NORTHERN CALIFORNIA POWER AGENCY  
LODI ENERGY CENTER  
STATEMENT OF REVENUES, EXPENSES  
& CHANGES IN NET POSITION  
UNAUDITED**

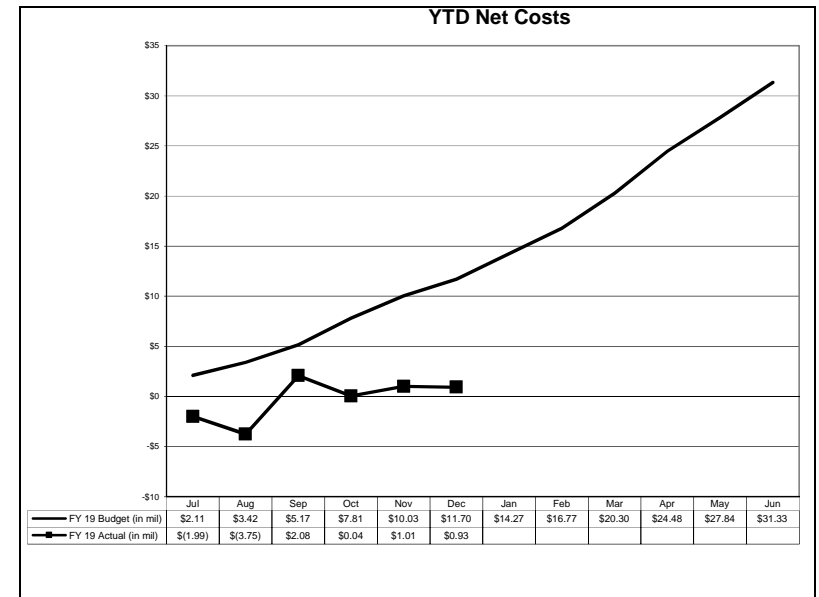
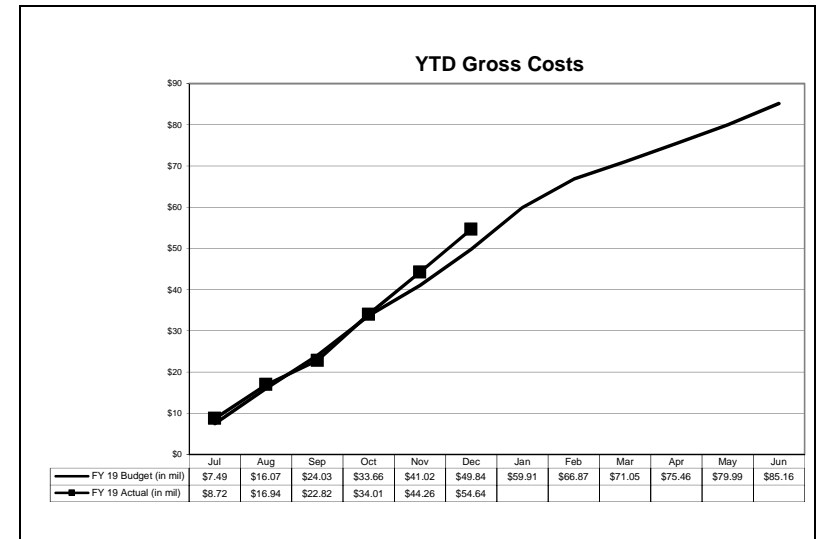
		Six Months Ended December	
		2018	2017
<b>SALES FOR RESALE</b>			
Participants	\$	13,275,812	\$ 17,560,382
Other		53,441,694	32,587,925
<b>TOTAL SALES FOR RESALE</b>		<b>66,717,506</b>	<b>50,148,307</b>
<b>OPERATING EXPENSES</b>			
Operations		33,977,879	20,918,401
Depreciation		7,308,414	7,306,011
Purchased power		3,008,456	2,754,690
Maintenance		1,916,676	1,839,609
Administrative and general		2,452,738	2,298,177
Transmission		533,082	574,174
Intercompany (sales) purchases		105,798	131,629
<b>TOTAL OPERATING EXPENSES</b>		<b>49,303,043</b>	<b>35,822,691</b>
<b>NET OPERATING REVENUES</b>		<b>17,414,463</b>	<b>14,325,616</b>
<b>OTHER REVENUES (EXPENSES)</b>			
Interest expense		(7,379,006)	(7,800,906)
Interest income		869,284	399,396
Other		2,079,713	1,319,184
<b>TOTAL OTHER REVENUES (EXPENSES)</b>		<b>(4,430,009)</b>	<b>(6,082,326)</b>
<b>FUTURE RECOVERABLE AMOUNTS</b>		<b>690,006</b>	<b>1,081,514</b>
<b>REFUNDS TO PARTICIPANTS</b>		<b>259,033</b>	<b>(2,480,557)</b>
<b>INCREASE IN NET POSITION</b>		<b>13,933,493</b>	<b>6,844,247</b>
<b>NET POSITION</b>			
Beginning of year		3,243,533	6,207,631
End of period	\$	17,177,026	\$ 13,051,878

**Lodi Energy Center  
FY 2019 Operating Costs  
As of December 31, 2018**

	Annual Budget	Actual	Remaining	YTD % Remaining	Notes
<b>Routine O&amp;M Costs</b>					
Variable	\$ 4,733,380	\$ 1,671,656	\$ 3,061,724	65%	<b>A</b>
Fixed	3,443,662	1,529,805	1,913,857	56%	
Administration	205,529	54,459	151,070	74%	
Mandatory Costs	298,336	184,354	113,982	38%	
Routine O&M Costs without Labor	8,680,907	3,440,274	5,240,633	60%	
Labor	5,284,165	2,249,891	3,034,274	57%	
<b>Total Routine O&amp;M Cost</b>	<b>13,965,072</b>	<b>5,690,165</b>	<b>8,274,907</b>	<b>59%</b>	
<b>Other Costs</b>					
Fuel	33,092,116	29,487,649	3,604,467	11%	<b>B C C</b>
CA ISO Charges	550,660	533,082	17,578	3%	
CA ISO Purchased Energy	5,113,848	3,008,456	2,105,392	41%	
Debt Service	26,079,852	13,039,927	13,039,925	50%	
Insurance	625,976	241,942	384,034	61%	
Other Costs	124,926	60,120	64,806	52%	
Generation Services Shared	368,963	141,611	227,352	62%	
Administrative & General (Allocated)	2,182,080	946,766	1,235,314	57%	
Power Management Allocated Costs	1,446,134	723,067	723,067	50%	
<b>Total O&amp;M Cost</b>	<b>83,549,627</b>	<b>53,872,785</b>	<b>29,676,842</b>	<b>36%</b>	
<b>Projects</b>					
Operations & Maintenance	52,000	41,020	10,980	21%	
Capital	100,000	-	100,000	100%	
Maintenance Reserve	1,461,107	730,554	730,553	50%	
<b>Total Projects</b>	<b>1,613,107</b>	<b>771,574</b>	<b>841,533</b>	<b>52%</b>	
<b>Annual Cost</b>	<b>85,162,734</b>	<b>54,644,359</b>	<b>30,518,375</b>	<b>36%</b>	
<b>Less: Third Party Revenue</b>					
Interest Income	385,845	269,436	116,409	30%	
ISO Energy Sales	52,414,938	52,454,866	(39,928)	0%	
Ancillary Services Sales	1,028,631	986,828	41,803	4%	
	53,829,414	53,711,130	118,284	0%	
<b>Net Annual Cost to Participants</b>	<b>\$ 31,333,320</b>	<b>\$ 933,229</b>	<b>\$ 30,400,091</b>	<b>97%</b>	
<b>Total Variable Costs</b>	<b>43,490,004</b>	<b>34,700,843</b>	<b>8,789,161</b>		
<b>Total Fixed Costs</b>	<b>41,672,730</b>	<b>19,943,516</b>	<b>21,729,214</b>		
	<b>\$ 85,162,734</b>	<b>\$ 54,644,359</b>	<b>\$ 30,518,375</b>		
<b>Net Cumulative Generation (MWh)</b>	<b>1,304,122</b>	<b>957,215</b>			
<b>Total O&amp;M Cost Per MWh</b>	<b>\$ 64.07</b>	<b>\$ 56.28</b>			
<b>Net Annual Cost Per MWh</b>	<b>\$ 24.03</b>	<b>\$ 0.97</b>			

**Footnotes:**

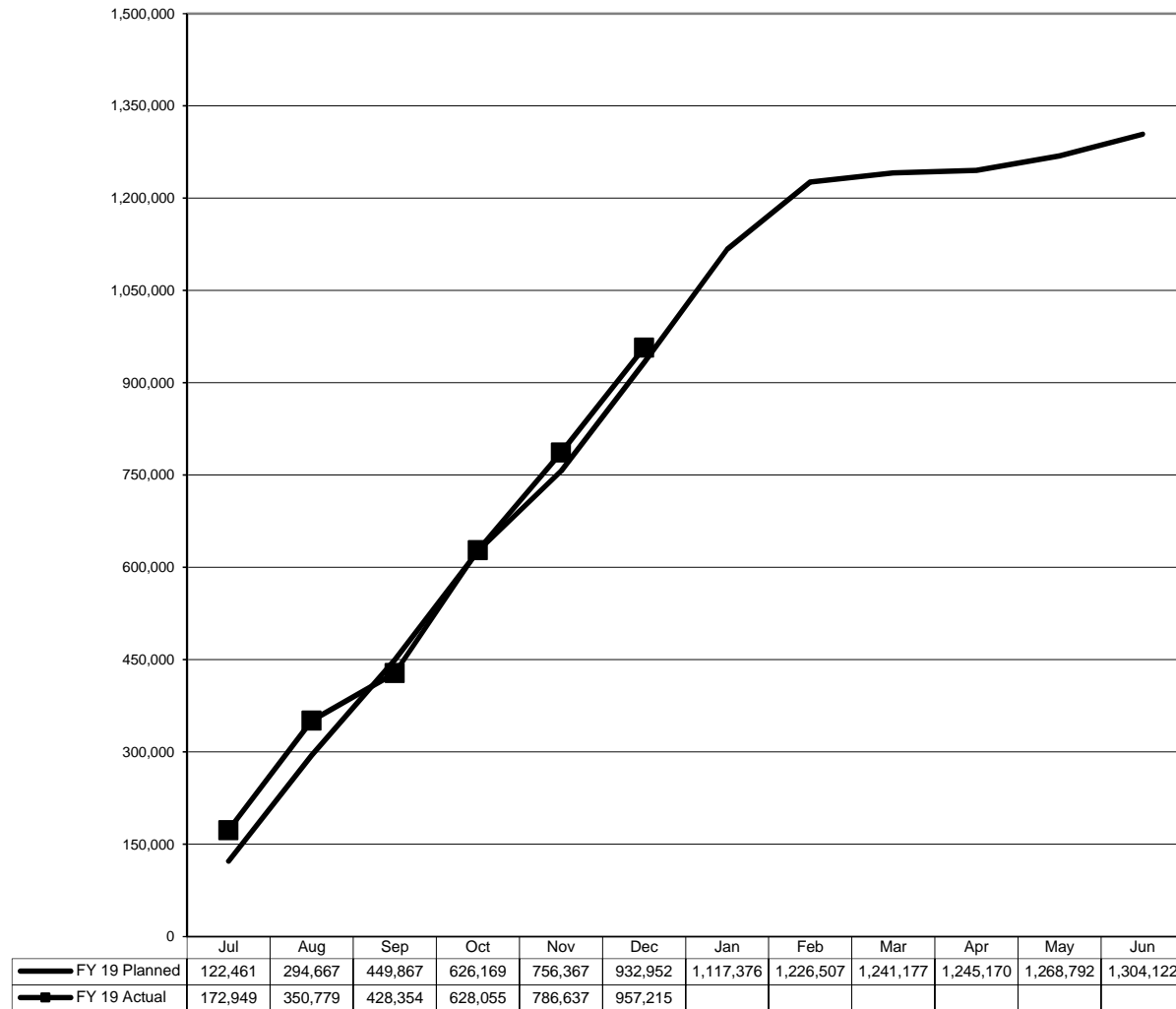
- General** - The plant ran 31 days during the month.  
December payroll, A&G allocation and generation services allocation are estimated.
- A** - Payments for annual CEC fee.
- B** - Higher fuel costs due to higher generation and slightly higher price per mmBtu.
- C** - Higher than budgeted CA ISO costs due to higher generation, GMC and energy costs.



# Annual Budget LEC Generation Analysis Planned vs. Actual FY 2019

In MWh

## Lodi Energy Center







## **Lodi Energy Center Project Participant Committee**

### **LEC GHG Reports**

AGENDA ITEM NO.: 8

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**Date:** January 7, 2019

**To:** Lodi Energy Center Project Participant Committee

**Subject:** GHG Reports (excerpted from monthly ARB)

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2013 NCPA All Resources Bill LEC GHG Compliance Instrument Detail Report for the Lodi Energy Center																
	Actual													Compliance Year 2013		
IDENTIFIER	DECEMBER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	Total	Charge Code	Source
Energy (MWh)	0	82,787	101,925	128,167	134,284	32,545	80,153	122,492	94,615	92,091	98,739	105,078	138,068	1,210,944		Forecast/Meter
Gas Schedule (MMBtu)	0	593,484	723,038	894,657	952,529	229,724	579,650	870,331	673,965	650,250	692,396	738,008	965,292	8,563,324		Forecast/Meter
Emissions Factor (MT/MMBtu)	0	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054			MARS
HVAC/Water Heater (MT)													86,000			
Monthly MT Emissions (MT)	0	32,027	39,019	48,280	51,403	12,397	31,281	46,967	36,371	35,091	37,365	39,827	52,178	462,206		derived
Cumulative MT Obligation (MT)	0	32,027	71,046	119,326	170,730	183,127	214,407	261,375	297,745	332,836	370,201	410,028	462,206	462,206		derived
Compliance Instrument Participant Transfers (to LEC)																
Auction Allowances	92,695	5,350	0	13,644	105,000	50,632	30,628	1,600	102,200	12,594	37,500	0	46,290	498,133		CITSS
Secondary Market Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Reserve Sale Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Offsets	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Total Compliance Instrument Participant Transfers (MT)	92,695	5,350	0	13,644	105,000	50,632	30,628	1,600	102,200	12,594	37,500	0	46,290	498,133		
NCPA Compliance Instrument Purchases (for LEC)																
Auction Purchases	47,000	0	0	0	0	0	0	0	0	0	0	0	0	47,000		CITSS
Secondary Market Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Reserve Sale Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Offset Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Total NCPA Compliance Instrument Purchases (MT)	47,000	0	0	0	0	0	0	0	0	0	0	0	0	47,000		
Compliance Instruments Surrendered to CARB (MT)	0	0	0	0	0	0	0	0	0	0	0	0	0			CITSS
Total Monthly Activity (MT)	139,695	5,350	0	13,644	105,000	50,632	30,628	1,600	102,200	12,594	37,500	0	46,290	545,133		derived
Cumulative MT Account Balance [MTA] (MT)	139,695	145,045	145,045	158,689	263,689	314,321	344,949	346,549	448,749	461,343	498,843	498,843	545,133	545,133		derived
MTA Shortfall (MT)	(139,695)	(113,018)	(73,999)	(39,363)	(92,959)	(131,194)	(130,542)	(85,174)	(151,004)	(128,507)	(128,642)	(88,815)	(82,927)	(82,927)	MTA SHORTFALL	derived

2014 NCPA All Resources Bill LEC GHG Compliance Instrument Detail Report for the Lodi Energy Center																
	Actual												Compliance Year 2014	Cumulative Totals		
IDENTIFIER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	Total	Total	Charge Code	Source
Energy (MWh)	136,604	156,089	120,489	55,378	71,210	51,037	118,473	69,006	178,831	197,715	51,636	106,338	1,312,806	2,523,750		Forecast/Meter
Gas Schedule (MMBtu)	951,700	1,092,730	858,805	391,272	512,068	371,695	836,762	496,327	1,251,547	1,371,546	372,826	759,691	9,266,969	17,830,293		Forecast/Meter
Emissions Factor (MT/MMBtu)	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054		MARS
HVAC/Water Heater (MT)												173,000				
Monthly MT Emissions (MT)	51,358	58,969	46,345	21,115	27,634	20,059	45,156	26,784	67,540	74,015	20,120	41,170	500,265	962,471		derived
Cumulative MT Obligation (MT)	513,564	572,533	618,879	639,994	667,628	687,686	732,842	759,626	827,166	901,181	782,385	823,555	823,555	823,555		derived
Compliance Instrument Participant Transfers (to LEC)																
Auction Allowances	102,347	40,000	48,066	25,000	1,290	163,248	0	0	13,586	50,520	80,350	350	524,757	1,022,890		CITSS
Secondary Market Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Reserve Sale Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Offsets	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Total Compliance Instrument Participant Transfers (MT)	102,347	40,000	48,066	25,000	1,290	163,248	0	0	13,586	50,520	80,350	350	524,757	1,022,890		
NCPA Compliance Instrument Purchases (for LEC)																
Auction Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	47,000		CITSS
Secondary Market Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Reserve Sale Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Offset Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Total NCPA Compliance Instrument Purchases (MT)	0	0	0	0	0	0	0	0	0	0	0	0	0	47,000		
Compliance Instruments Surrendered to CARB (MT)	0	0	0	0	0	0	0	0	0	0	138,916	0	138,916	138,916		CITSS
Total Monthly Activity (MT)	102,347	40,000	48,066	25,000	1,290	163,248	0	0	13,586	50,520	80,350	350	524,757	1,069,890		derived
Cumulative MT Account Balance [MTA] (MT)	647,480	687,480	735,546	760,546	761,836	925,084	925,084	925,084	938,670	989,190	930,624	930,974	930,974	930,974		derived
MTA Shortfall (MT)	(133,916)	(114,947)	(116,667)	(120,552)	(94,208)	(237,398)	(192,242)	(165,458)	(111,504)	(88,009)	(148,239)	(107,419)	(107,419)	(107,419)	MTA SHORTFALL	derived

2015 NCPA All Resources Bill LEC GHG Compliance Instrument Detail Report for the Lodi Energy Center																
	Actual												Compliance Year 2015	Cumulative Totals		
IDENTIFIER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	Total	Total	Charge Code	Source
Energy (MWh)	196,019	151,600	184,507	181,244	91,067	142,275	103,883	137,266	131,608	165,737	75,231	131,779	1,692,216	4,215,967		Forecast/Meter
Gas Schedule (MMBtu)	1,368,474	1,073,330	1,299,294	1,269,481	646,027	1,009,450	740,553	971,283	927,730	1,171,129	541,136	940,340	11,958,227	29,788,520		Forecast/Meter
Emissions Factor (MT/MMBtu)	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054				MARS
HVAC/Water Heater (MT)																
Monthly MT Emissions (MT)	73,850	57,922	70,116	68,508	34,863	54,475	39,964	52,415	50,065	63,200	29,202	50,745	645,326	1,607,796		derived
Cumulative MT Obligation (MT)	897,404	955,327	1,025,443	1,093,951	1,128,814	1,183,288	1,223,252	1,275,668	1,325,733	1,388,933	593,540	644,285	644,285	644,285		derived
Compliance Instrument Participant Transfers (to LEC)																
Auction Allowances	41,342	250	172,100	15,000	86,000	107,327	104,000	26,021	0	58,201	375	200	610,816	1,633,706		CITSS
Secondary Market Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Reserve Sale Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Offsets	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Total Compliance Instrument Participant Transfers (MT)	41,342	250	172,100	15,000	86,000	107,327	104,000	26,021	0	58,201	375	200	610,816	1,633,706		
NCPA Compliance Instrument Purchases (for LEC)																
Auction Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	47,000		CITSS
Secondary Market Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Reserve Sale Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Offset Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Total NCPA Compliance Instrument Purchases (MT)	0	0	0	0	0	0	0	0	0	0	0	0	0	47,000		
Compliance Instruments Surrendered to CARB (MT)	0	0	0	0	0	0	0	0	0	0	824,595	0	824,595	963,511		CITSS
Total Monthly Activity (MT)	41,342	250	172,100	15,000	86,000	107,327	104,000	26,021	0	58,201	375	200	610,816	1,680,706		derived
Cumulative MT Account Balance [MTA] (MT)	972,316	972,566	1,144,666	1,159,666	1,245,666	1,352,993	1,456,993	1,483,014	1,483,014	1,541,215	716,995	717,195	717,195	717,195		derived
MTA Shortfall (MT)	(74,912)	(17,239)	(119,223)	(65,715)	(116,852)	(169,705)	(233,741)	(207,346)	(157,281)	(152,282)	(123,455)	(72,910)	(72,910)	(72,910)	MTA SHORTFALL	derived

2016 NCPA All Resources Bill LEC GHG Compliance Instrument Detail Report for the Lodi Energy Center																
	Actual												Compliance Year 2016	Cumulative Totals		
IDENTIFIER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	Total	Total	Charge Code	Source
Energy (MWh)	97,230	27,160	91,578	45,437	3,423	66,596	76,008	31,653	25,597	20,636	17,488	28,418	531,223	4,747,190		Forecast/Meter
Gas Schedule (MMBtu)	695,120	194,179	678,033	339,504	27,754	485,792	547,510	234,782	192,679	158,835	158,835	214,109	3,927,132	33,715,652		Forecast/Meter
Emissions Factor (MT/MMBtu)	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054				MARS
HVAC/Water Heater (MT)																
Monthly MT Emissions (MT)	37,512	10,479	36,590	18,321	1,498	26,216	29,546	12,670	10,398	8,572	8,572	11,554	211,928	1,819,724		derived
Cumulative MT Obligation (MT)	681,798	692,276	728,867	747,188	748,686	774,901	804,448	817,118	827,516	836,087	650,684	662,238	662,238	662,238		derived
Compliance Instrument Participant Transfers (to LEC)																
Auction Allowances	211,481	0	2,500	31,000	0	55,000	0	56,600	0	0	0	0	356,581	1,990,287		CITSS
Secondary Market Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Reserve Sale Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Offsets	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Total Compliance Instrument Participant Transfers (MT)	211,481	0	2,500	31,000	0	55,000	0	56,600	0	0	0	0	356,581	1,990,287		
NCPA Compliance Instrument Purchases (for LEC)																
Auction Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	47,000		CITSS
Secondary Market Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Reserve Sale Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Offset Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0		CITSS
Total NCPA Compliance Instrument Purchases (MT)	0	0	0	0	0	0	0	0	0	0	0	0	0	47,000		
Compliance Instruments Surrendered to CARB (MT)	0	0	0	0	0	0	0	0	0	0	193,975	0	193,975	1,157,486		CITSS
Total Monthly Activity (MT)	211,481	0	2,500	31,000	0	55,000	0	56,600	0	0	0	0	356,581	2,037,287		derived
Cumulative MT Account Balance [MTA] (MT)	928,676	928,676	931,176	962,176	962,176	1,017,176	1,017,176	1,073,776	1,073,776	1,073,776	879,801	879,801	879,801	879,801		derived
MTA Shortfall (MT)	(246,878)	(236,400)	(202,309)	(214,988)	(213,490)	(242,275)	(212,728)	(256,658)	(246,260)	(237,689)	(229,117)	(217,563)	(217,563)	(217,563)	MTA SHORTFALL	derived

2017 NCPA All Resources Bill LEC GHG Compliance Instrument Detail Report for the Lodi Energy Center															
IDENTIFIER	Actual											Compliance Year 2017	Cumulative Totals	Charge Code	Source
	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	Total		
Energy (MWh)	38,917	15,337	7,086	0	3,436	35,997	54,015	66,209	93,620	136,041	126,574	149,304	726,534	1,088,590	Forecast/Meter
Gas Schedule (MMBtu)	301,781	115,019	59,077	0	29,558	266,056	403,302	464,997	675,267	969,402	901,245	1,063,441	5,249,146	7,830,656	Forecast/Meter
Emissions Factor (MT/MMBtu)	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054			MARS
HVAC/Water Heater (MT)															
Monthly MT Emissions (MT)	16,286	6,207	3,188	0	1,595	14,358	21,764	25,094	36,441	52,314	48,636	57,389	283,270	2,102,994	derived
Cumulative MT Obligation (MT)	678,524	684,731	687,919	687,919	689,514	703,872	725,636	750,729	787,170	839,484	824,883	882,271	882,271	882,271	derived
Compliance Instrument Participant Transfers (to LEC)															
Auction Allowances	0	0	5,000	0	0	0	0	0	67,058	0	20,500	92,321	184,879	2,175,166	CITSS
Secondary Market Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Reserve Sale Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Offsets	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Total Compliance Instrument Participant Transfers (MT)	0	0	5,000	0	0	0	0	0	67,058	0	20,500	92,321	184,879	2,175,166	
														0	
NCPA Compliance Instrument Purchases (for LEC)														0	
Auction Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	47,000	CITSS
Secondary Market Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Reserve Sale Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Offset Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Total NCPA Compliance Instrument Purchases (MT)	0	0	0	0	0	0	0	0	0	0	0	0	0	47,000	
Compliance Instruments Surrendered to CARB (MT)	0	0	0	0	0	0	0	0	0	0	63,237	0	63,237	1,220,723	CITSS
Total Monthly Activity (MT)	0	0	5,000	0	0	0	0	0	67,058	0	20,500	92,321	184,879	256,666	derived
Cumulative MT Account Balance [MTA] (MT)	879,801	879,801	884,801	884,801	884,801	884,801	884,801	884,801	951,859	951,859	909,122	1,001,443	1,001,443	1,001,443	derived
MTA Shortfall (MT)	(201,277)	(195,070)	(196,882)	(196,882)	(195,287)	(180,929)	(159,165)	(134,072)	(164,689)	(112,375)	(84,239)	(119,172)	(119,172)	(119,172)	MTA SHORTFALL derived

2018 NCPA All Resources Bill LEC GHG Compliance Instrument Detail Report for the Lodi Energy Center															
IDENTIFIER	Actual											Estimated	Compliance	Cumulative	Charge Code
	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	Total	Total	
Energy (MWh)	141,193	110,674	138,464	14,747	8,838	35,406	172,949	177,830	77,575	199,698	158,585	193,192	1,429,151	6,902,875	Forecast/Meter
Gas Schedule (MMBtu)	1,007,872	801,081	997,246	115,836	73,178	270,922	1,220,655	1,254,720	559,063	1,404,033	1,120,776	1,390,983	10,216,365	49,181,163	Forecast/Meter
Emissions Factor (MT/MMBtu)	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054	0.054		0	MARS
HVAC/Water Heater (MT)														0	
Monthly MT Emissions (MT)	54,390	43,230	53,816	6,251	3,949	14,620	65,873	67,711	30,170	75,769	60,483	75,064	551,326	2,654,320	derived
Cumulative MT Obligation (MT)	936,661	979,891	1,033,708	1,039,959	1,043,908	1,058,528	1,124,401	1,192,112	1,222,282	1,298,050	474,038	549,102	549,102	549,102	derived
Compliance Instrument Participant Transfers (to LEC)															
Auction Allowances	159,100	0	34,940	16,885	53,452	35,500	33,232	140,431	61,315	4,049	33,452	26,154	598,510	2,773,676	CITSS
Secondary Market Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Reserve Sale Allowances	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Offsets	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Total Compliance Instrument Participant Transfers (MT)	159,100	0	34,940	16,885	53,452	35,500	33,232	140,431	61,315	4,049	33,452	26,154	598,510	2,773,676	
NCPA Compliance Instrument Purchases (for LEC)															
Auction Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	47,000	CITSS
Secondary Market Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Reserve Sale Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Offset Purchases	0	0	0	0	0	0	0	0	0	0	0	0	0	0	CITSS
Total NCPA Compliance Instrument Purchases (MT)	0	0	0	0	0	0	0	0	0	0	0	0	0	47,000	
Compliance Instruments Surrendered to CARB (MT)	0	0	0	0	0	0	0	0	0	0	884,495	0	884,495	2,105,218	CITSS
Total Monthly Activity (MT)	159,100	0	34,940	16,885	53,452	35,500	33,232	140,431	61,315	4,049	33,452	26,154	598,510	2,820,676	derived
Cumulative MT Account Balance [MTA] (MT)	1,160,543	1,160,543	1,195,483	1,212,368	1,265,820	1,301,320	1,334,552	1,474,983	1,536,298	1,540,347	689,304	715,458	715,458	715,458	derived
MTA Shortfall (MT)	(223,882)	(180,652)	(161,775)	(172,409)	(221,912)	(242,792)	(210,151)	(282,871)	(314,016)	(242,297)	(215,266)	(166,356)	(166,356)	(166,356)	MTA SHORTFALL derived

2019 NCPA All Resources Bill LEC GHG Compliance Instrument Detail Report for the Lodi Energy Center										
	Estimated						Compliance Year 2019	Cumulative Totals		
IDENTIFIER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	Total	Total	Charge Code	Source
Energy (MWh)	218,700	185,841	85,291	0	28,344	158,602	676,778	7,579,653		Forecast/Meter
Gas Schedule (MMBtu)	1,574,640	1,338,055	614,095	0	204,077	1,141,934	4,872,802	54,053,965		Forecast/Meter
Emissions Factor (MT/MMBtu)	0.054	0.054	0.054	0.054	0.054	0.054		0		MARS
HVAC/Water Heater (MT)								0		
Monthly MT Emissions (MT)	84,975	72,208	33,140	0	11,013	61,624	262,961	2,917,281		derived
Cumulative MT Obligation (MT)	634,078	706,286	739,426	739,426	750,439	812,063	812,063	812,063		derived
Compliance Instrument Participant Transfers (to LEC)										
Auction Allowances	0	0	0	0	0	0	0	2,773,676		CITSS
Secondary Market Allowances	0	0	0	0	0	0	0	0		CITSS
Reserve Sale Allowances	0	0	0	0	0	0	0	0		CITSS
Offsets	0	0	0	0	0	0	0	0		CITSS
Total Compliance Instrument Participant Transfers (MT)	0	0	0	0	0	0	0	2,773,676		
NCPA Compliance Instrument Purchases (for LEC)										
Auction Purchases	0	0	0	0	0	0	0	47,000		CITSS
Secondary Market Purchases	0	0	0	0	0	0	0	0		CITSS
Reserve Sale Purchases	0	0	0	0	0	0	0	0		CITSS
Offset Purchases	0	0	0	0	0	0	0	0		CITSS
Total NCPA Compliance Instrument Purchases (MT)	0	0	0	0	0	0	0	47,000		
Compliance Instruments Surrendered to CARB (MT)	0	0	0	0	0	0	0	2,105,218		CITSS
Total Monthly Activity (MT)	0	0	0	0	0	0	0	2,820,676		derived
Cumulative MT Account Balance [MTA] (MT)	715,458	715,458	715,458	715,458	715,458	715,458	715,458	715,458		derived
MTA Shortfall (MT)	(81,380)	(9,172)	23,968	23,968	34,981	96,605	96,605	96,605	MTA SHORTFALL	derived



NCPA All Resources Bill LEC GHG Obligation Detail Report (Cumulative) January 2019																
IDENTIFIER	AZUSA	BART	BIGGS	CDWR	GRI	HEA	LOD	LOM	MID	PLU	PWRPA	SNCL	UKI	TOTAL	Charge Code	Source
Allocation Percentages																
Generation Entitlement Share %	2.7857%	6.6000%	0.2679%	33.5000%	1.9643%	1.6428%	9.5000%	2.0357%	10.7143%	0.7857%	2.6679%	25.7500%	1.7857%	100%		MARS
Obligation Accounts																
Current MT Compliance Obligation (MTO) Balance (MT)	17,695	41,923	1,702	229,687	12,477	10,436	60,343	12,906	68,056	4,989	16,946	163,563	11,342	652,064		derived
Current MT Compliance Instrument Account (MTA) Balance (MT)	17,694	41,943	1,764	285,170	12,703	10,561	70,083	13,040	77,587	5,179	16,946	163,563	11,548	727,781		derived
MTA Shortfall (MT)	0	(20)	(62)	(55,483)	(226)	(125)	(9,739)	(135)	(9,531)	(189)	(0)	0	(206)	(75,717)	MTA SHORTFALL	Derived
Monthly GHG Price \$/MT	15.60	15.60	15.60	15.60	15.60	15.60	15.60	15.60	15.60	15.60	15.60	15.60	15.60	15.60	MTA SHORTFALL	ICE Index
GHG Minimum Cash Compliance Obligation (\$)	5	0	0	0	0	0	0	0	0	0	0	0	0	6	MTA SHORTFALL	Derived
Current Month CCA Balance (\$)*	60,991	0	143	0	1,103	4,780	755	0	0	0	0	0	2,652	70,424	CCA BALANCE	Accounting
Net GHG Obligation (\$)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	NET GHG OBLIG	Derived

\* The Current Month CCA Balance (\$) consists of the current cash balance plus any outstanding balance of Net GHG Obligation (\$) billed but not yet received.



## **Lodi Energy Center Project Participant Committee Staff Report**

AGENDA ITEM NO.: 9

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**Date:** January 3, 2019

**Meeting Date:** January 7, 2019

**To:** Lodi Energy Center Project Participant Committee

**Subject:** Schneider Electric USA, Inc. – Five Year Multi-Task General Services Agreement; Applicable to the following projects: All NCPA locations and Members, SCPPA, and SCPPA Members

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### Proposal

Approve the Multi-Task General Services Agreement with Schneider Electric USA, Inc. for electrical related services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,000,000 over 5 years for use at all facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA Members.

### Background

Electrical related services are required from time to time related to project support at facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA Members.

### Selection Process

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has similar agreements in place with 3D Technical Services, Electrical Maintenance Consultants, Hart High Voltage and Eaton Corporation and seeks bids from multiple qualified providers whenever services are needed. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

### Fiscal Impact

Upon execution, the total cost of the agreement is not-to-exceed \$2,000,000 over five years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

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 the California Environmental Quality Act. No environmental review is necessary.

Submitted by:

KEN SPEER  
Assistant General Manager  
Generation Services

Attachments: (1)

- Multi-Task General Services Agreement with Schneider Electric USA, Inc.



**MULTI-TASK  
GENERAL SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
SCHNEIDER ELECTRIC USA, INC.**

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Schneider Electric USA, Inc., a corporation with its office located at Boston One Campus, 800 Federal Street, Andover, MA 01810 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2018 ("Effective Date") in Roseville, California.

**Section 1. SCOPE OF WORK.** Subject to the terms and conditions set forth in this Agreement, Contractor is willing to provide to Agency the range of services and/or goods described in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").

- 1.1 Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end when Contractor completes the Work, or no later than five (5) years from the date this Agreement was signed by Agency, whichever is shorter.
- 1.2 Standard of Performance.** Contractor shall perform the Work in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged and for which Contractor is providing the Work. Contractor represents that it is licensed, qualified and experienced to provide the Work set forth herein.
- 1.3 Assignment of Personnel.** Contractor shall assign only competent personnel to perform the Work. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, requests the reassignment of any such personnel, Contractor shall, immediately upon receiving written notice from Agency of such request, reassign such personnel.
- 1.4 Work Provided.** Work provided under this Agreement by Contractor may include Work directly to the Agency or, as requested by the Agency and consistent with the terms of this Agreement, to Agency members, Southern California Public Power Authority ("SCPPA") or SCPPA members.
- 1.5 Request for Work to be Performed.** At such time that Agency determines to have Contractor perform Work under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific Work to be performed ("Requested Work"), may include a not-to-exceed cap on monetary cap on Requested Work and all related expenditures authorized by that Purchase Order, and shall include a time by which the Requested Work shall be completed. Contractor shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that Contractor chooses not to perform the Requested Work. If Contractor agrees to perform the Requested Work, begins to perform the Requested Work, or does not respond within the seven day period specified, then Contractor will have

agreed to perform the Requested Work on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

**Section 2. COMPENSATION.** Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED** TWO MILLION dollars (\$2,000,000.00) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

**2.1 Invoices.** Contractor shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- The beginning and ending dates of the billing period;
- Work performed;
- The Purchase Order number authorizing the Requested Work;
- At Agency's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense, with supporting documentation, to Agency's reasonable satisfaction;
- At Agency's option, the total number of hours of work performed under the Agreement by Contractor and each employee, agent, and subcontractor of Contractor performing work hereunder.

Invoices shall be sent to:

Northern California Power Agency  
651 Commerce Drive  
Roseville, California 95678  
Attn: Accounts Payable  
[AcctsPayable@ncpa.com](mailto:AcctsPayable@ncpa.com)

**2.2 Monthly Payment.** Agency shall make monthly payments, based on invoices received, for Work satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Contractor.

**2.3 Payment of Taxes.** Contractor is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.

**2.4 Authorization to Perform Work.** The Contractor is not authorized to perform any Work or incur any costs whatsoever under the terms of this Agreement until receipt of a Purchase Order from the Contract Administrator.

- 2.5 Timing for Submittal of Final Invoice.** Contractor shall have ninety (90) days after completion of the Requested Work to submit its final invoice for the Requested Work. In the event Contractor fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Contractor is deemed to have waived its right to collect its final payment for the Requested Work from Agency.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Contractor shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the Work.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any Work under this Agreement, Contractor, at its own cost and expense, shall procure the types and amounts of insurance listed below and shall maintain the types and amounts of insurance listed below for the period covered by this Agreement.

- 4.1 Workers' Compensation.** If Contractor employs any person, Contractor shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor with limits of not less than one million dollars (\$1,000,000.00) per accident.

**4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 Commercial General Insurance.** Contractor shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Contractor. The policy shall provide a minimum limit of \$5,000,000 per occurrence/\$5,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering commercial General Liability. No endorsement shall be attached limiting the coverage.

**4.2.2 Automobile Liability.** Contractor shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Contractor, on or off Agency premises. The policy shall provide a minimum limit of \$1,000,000 per each accident. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

**4.2.3 General Liability/Umbrella Insurance.** The coverage amounts set forth above may be met by a combination of underlying and umbrella policies as long as in combination the limits equal or exceed those stated.

**4.3 Professional Liability Insurance.** (Required for all Contractors providing engineering, architectural, design, and similar services requiring special licensing from the State of California.) Contractor shall maintain professional liability insurance appropriate to Contractor's profession performing work in connection with this Agreement in an amount not less than one million dollars (\$1,000,000.00) and two million dollars (\$2,000,000) aggregate covering the Contractor's errors and omissions. . Such insurance shall be on a "claims-made" basis, subject to the following conditions: (1) the retroactive date of the policy shall be on or before the Effective Date of this Agreement; (2) the policy shall be maintained for at least five (5) years after completion of the Services and, if requested by Agency, evidence of coverage shall be provided during this period; and (3) if, within five (5) years of completion of the Services, coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Agreement, Consultant shall purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services and, if requested by Agency, provide evidence of coverage during this period.

**4.4 Pollution Insurance.** Not Applicable.

**4.5 All Policies Requirements.**

**4.5.1 Verification of coverage.** Prior to beginning any work under this Agreement, Contractor shall provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the policies referenced in Section 4.2, if applicable, including the Agency as an additional insured and declaring such insurance primary in regard to work performed pursuant to this Agreement.

**4.5.2 Notice of Reduction in or Cancellation of Coverage.** Contractor shall provide at least thirty (30) days prior written notice to Agency of any reduction in amount, or cancellation, of the policies referenced in Section 4.

**4.5.3 Higher Limits.** Not Applicable.

**4.5.4 Additional Certificates and Endorsements.** If Contractor performs Work for Agency members, SCPPA and/or SCPPA members pursuant to this Agreement, Contractor shall provide the certificates of insurance and policy endorsements, as referenced in Section 4.5.1, including the specific Agency member, SCPPA and/or SCPPA member for which the Work is to be performed.

**4.5.5 Waiver of Subrogation.** Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. In addition, the

Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Contractor, its employees, agents and subcontractors.

- 4.6 Contractor's Obligation.** Contractor shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Work are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this Agreement. Contractor shall also ensure that all workers involved in the provision of Work are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

## **Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.**

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope Applicable to Work by Design Professionals.** Contractor shall indemnify, defend and hold harmless the Agency and its officials, commissioners, officers, employees, and volunteers from and against claims asserted by third parties that arise out of, pertain to or relate injury to persons or tangible personal or real property, to the extent they arise out of or in connection to the negligence, recklessness or willful misconduct of the Contractor in its performance of Work under this Agreement. Contractor shall bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such claims, whether directly or indirectly ("Liabilities"). Such obligations to defend, hold harmless and indemnify the Agency shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the Agency.

**NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, EXCEPT WITH RESPECT TO THIRD PARTY INDEMNIFICATION CLAIMS OR TO THE EXTENT BASED ON CONTRACTOR'S GROSS NEGLIGENCE, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING LOST TIME, PROFITS, REVENUE OR DATA) OF ANY KIND RELATED IN ANY MANNER WITH THIS CONTRACT. REGARDLESS OF THE FORM OF ACTION, OR THE THEORY OF RECOVERY EVEN IF CONTRACTOR HAS BEEN APPRISED OF THE POSSIBILITY OF SUCH DAMAGES, THE TOTAL CUMULATIVE LIABILITY OF CONTRACTOR, ITS SUBCONTRACTORS AND SUPPLIERS OF ANY TIER WITH RESPECT TO THIS CONTRACT OR ANYTHING DONE IN CONNECTION THEREWITH, WHETHER IN CONTRACT,**



**IN TORT (EXCLUDING CONTRACTOR'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT OR THIRD PARTY CLAIMS) OR OTHERWISE, SHALL NOT EXCEED \$5,000,000.**

**5.3     Transfer of Title.** Not Applicable.

**Section 6.     STATUS OF CONTRACTOR.**

**6.1     Independent Contractor.** Contractor is an independent contractor and not an employee of Agency. Agency shall have the right to control Contractor only insofar as the results of Contractor's Work and assignment of personnel pursuant to Section 1; otherwise, Agency shall not have the right to control the means by which Contractor accomplishes Work rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.

Contractor shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Contractor and Agency acknowledge and agree that compensation paid by Agency to Contractor under this Agreement is based upon Contractor's estimated costs of providing the Work, including salaries and benefits of employees, agents and subcontractors of Contractor.

Contractor shall indemnify, defend, and hold harmless Agency from any lawsuit, administrative action, or other claim for penalties, losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such claims, whether directly or indirectly, due to Contractor's failure to secure workers' compensation insurance for its employees, agents, or subcontractors.

Contractor agrees that it is responsible for the provision of group healthcare benefits to its fulltime employees under 26 U.S.C. § 4980H of the Affordable Care Act. To the extent permitted by law, Contractor shall indemnify, defend and hold harmless Agency from any penalty issued to Agency under the Affordable Care Act resulting from the performance of the Services by any employee, agent, or subcontractor of Contractor.

- 6.2 Contractor Not Agent.** Except as Agency may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Contractor. Neither Agency nor Contractor may assign this Agreement or any interest therein without the prior written approval of the other Party. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Contractor shall supervise all work subcontracted by Contractor in performing the Work and shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Contractor from any of its obligations under this Agreement with respect to the Work and Contractor is obligated to ensure that any and all subcontractors performing any Work shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.
- 6.4 Certification as to California Energy Commission.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit C.
- 6.5 Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit D. Not Applicable
- 6.6 Maintenance Labor Agreement.** If the Work is subject to the terms of one or more Maintenance Labor Agreements, which are applicable only to certain types of construction, repair and/or maintenance projects, then Contractor shall execute Exhibit E and/or similar documentation as to compliance.

## **Section 7. LEGAL REQUIREMENTS.**

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Contractor and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Licenses and Permits.** Contractor represents and warrants to Agency that Contractor and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses,

permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.

- 7.4 Monitoring by DIR.** The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 7.5 Registration with DIR.** During the term of this Agreement, Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform Work consistent with Labor Code section 1725.5.
- 7.6 Prevailing Wage Rates.** In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed; the Agency has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project; and copies of the prevailing rate of per diem wages are on file at the Agency and will be made available on request. Throughout the performance of the Work, Contractor must comply with all applicable laws and regulations that apply to wages earned in performance of the Work. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the Agency harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

Additionally, in accordance with the California Administrative Code, Title 8, Group 3, Article 2, Section 16000, Publication of Prevailing Wage Rates by Awarding Bodies, copies of the applicable determination of the Director can be found on the web at: <http://www.dir.ca.gov/DLSR/PWD/> and may be reviewed at any time.

Contractor shall be required to submit to the Agency during the contract period, copies of Public Works payroll reporting information per California Department of Industrial Relations, Form A- 1-131 (New 2-80) concerning work performed under this Agreement.

Contractor shall comply with applicable law, including Labor Code Sections 1774 and 1775. In accordance with Section 1775, Contractor shall forfeit as a penalty to Agency \$50.00 for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for such work or craft in which such worker is employed for any Work done under the Agreement by Contractor or by any subcontractor under Contractor in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 *et seq.* In addition to the penalty and pursuant to

Section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor.

## **Section 8. TERMINATION AND MODIFICATION.**

- 8.1 Termination.** Agency may cancel this Agreement at any time and without cause upon ten (10) days prior written notice to Contractor.

In the event of termination, Contractor shall be entitled to compensation for Work satisfactorily completed as of the effective date of termination, together with the costs Contractor actually incurs in canceling subcontracts or supply contracts entered into with respect to the terminated Agreement; Agency, however, may condition payment of such compensation upon Contractor delivering to Agency any or all records or documents (as referenced in Section 9.1 hereof).

- 8.2 Amendments.** The Parties may amend this Agreement only by a writing signed by both of the Parties.

- 8.3 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Contractor shall survive the termination of this Agreement.

- 8.4 Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, Agency's remedies shall include, but not be limited to, the following:

- 8.4.1** Immediately terminate the Agreement;
- 8.4.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product previously paid for by Agency and prepared by Contractor pursuant to this Agreement;
- 8.4.3** Retain a different Contractor to complete the Work not finished by Contractor; and/or
- 8.4.4** Charge Contractor the difference between the costs to complete the Work that is unfinished at the time of breach and the amount that Agency would have paid Contractor pursuant hereto if Contractor had completed the Work.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this

Agreement and that relate to the matters covered hereunder and that have been paid for by the Agency, shall be the property of the Agency. Contractor hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Contractor agree that, unless approved by Agency in writing, Contractor shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.

**9.2 Contractor's Books and Records.** Contractor shall maintain any and all records or other documents evidencing or relating to charges for Work or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor under this Agreement.

**9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under this Agreement.

**9.4 Confidential Information and Disclosure.**

**9.4.1 Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as Confidential Information in accordance with this section.

**9.4.2 Non-Disclosure of Confidential Information.** During the term of this Agreement, either party may disclose (the "Disclosing Party") Confidential Information to the other party (the "Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in confidence; and (b) shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Confidential Information.

**9.4.3 Permitted Disclosure.** Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. Disclosing Party may seek a protective order, including without limitation, a temporary restraining order to prevent or contest such permitted disclosure; provided, however, that Disclosing Party shall seek such remedies at its sole expense. Neither party shall have any liability for such permitted disclosures:

**9.4.3.1** Disclosure to employees, agents, contractors, subcontractors or other representatives of Receiving Party that have a need to know in connection with this Agreement.

**9.4.3.2** Disclosure in response to a valid order of a court, government or regulatory agency or as may otherwise be required by law; and

**9.4.3.3** Disclosure by Agency in response to a request pursuant to the California Public Records Act.

**9.4.4 Handling of Confidential Information.** Upon conclusion or termination of the Agreement, Receiving Party shall return to Disclosing Party or destroy Confidential Information (including all copies thereof), if requested by Disclosing Party in writing. Notwithstanding the foregoing, the Receiving Party may retain copies of such Confidential Information, subject to the confidentiality provisions of this Agreement: (a) for archival purposes in its computer system; (b) in its legal department files; and (c) in files of Receiving Party's representatives where such copies are necessary to comply with applicable law. Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

## **Section 10. PROJECT SITE.**

**10.1 Operations at the Project Site.** Each Project site may include the power plant areas, all buildings, offices, and other locations where Work is to be performed, including any access roads. Contractor shall perform the Work in such a manner as to cause a minimum of interference with the operations of the Agency; if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4; and other contractors at the Project site and to protect all persons and property thereon from damage or injury. Upon completion of the Work at a Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish, stemming from or relating to Contractor's Work.

- 10.2 Contractor's Equipment, Tools, Supplies and Materials.** Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, will be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by the Contractor. Any transportation furnished by Agency or, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall be solely as an accommodation and neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall have liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.
- 10.3 Use of Agency Equipment.** Contractor shall assume the risk and is solely responsible for its use of any equipment owned and property provided by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, for the performance of Work.

## **Section 11. WARRANTY.**

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Work shall be free from defects in design and workmanship, and that Contractor shall perform all Work in accordance with applicable federal, state, and local laws, rules and regulations including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.
- 11.2 Deficiencies in Work.** In addition to all other rights and remedies which Agency may have, Agency shall have the right to require, and Contractor shall be obligated at its own expense to perform, all further Work which may be required to correct any deficiencies which result from Contractor's failure to perform any Work in accordance with the standards required by this Agreement. If during the term of this Agreement or the one (1) year period following completion of the Work, any equipment, supplies or other materials or Work used or provided by Contractor under this Agreement fails due to defects in material and/or workmanship or other breach of this Agreement, Contractor shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.

- 11.3 Assignment of Warranties.** Contractor hereby assigns to Agency all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Work.

**Section 12. HEALTH AND SAFETY PROGRAMS.** The Contractor shall establish, maintain, and enforce safe work practices, and implement an accident/incident prevention program intended to ensure safe and healthful operations under their direction. The program shall include all requisite components of such a program under Federal, State and local regulations and shall comply with all site programs established by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4.

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2** Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4** Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from Agency to Contractor under this Agreement at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12.
- 12.5** Contractor shall immediately report any injuries to the Agency site safety representative. Additionally, the Contractor shall investigate and submit to the Agency site safety representative copies of all written accident reports, and coordinate with Agency if further investigation is requested.
- 12.6** Contractor shall take all reasonable steps and precautions to protect the health of its employees and other site personnel with regard to the Work. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental conditions. Copies of any sampling results will be forwarded to the Agency site safety representative upon request.



- 12.7** Contractor shall develop a plan to properly handle and dispose of any hazardous wastes, if any, Contractor generates in performing the Work.
- 12.8** Contractor shall advise its employees and subcontractors that any employee who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Work.
- 12.9** Contractor shall, at the sole option of the Agency, develop and provide to the Agency a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials shall include diesel fuel used for trucks owned or leased by the Contractor.
- 12.10** If Contractor is providing Work to an Agency Member, SCPPA or SCPPA member (collectively "Member" solely for the purpose of this section) pursuant to Section 1.4 hereof, then that Member shall have the same rights as the Agency under Sections 12.1, 12.2, 12.4, 12.5, and 12.6 hereof.

**Section 13. MISCELLANEOUS PROVISIONS.**

- 13.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 13.2 Venue.** In the event that either party brings any action against the other 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.
- 13.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 13.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 13.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 13.6 Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined

in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Contractor shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

**13.7 Contract Administrator.** This Agreement shall be administered by Ken Speer, Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.

**13.8 Notices.** Any written notice to Contractor shall be sent to:

Schneider Electric USA, Inc.  
Attention: Ed Stadelman  
6611 Preston Avenue, Suite A  
Livermore, CA 94551  
[Edwin.Stadelman@schneider-electric.com](mailto:Edwin.Stadelman@schneider-electric.com) (preferred method)

Any written notice to Agency shall be sent to:

Randy S. Howard  
General Manager  
Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678

With a copy to:

Jane E. Luckhardt  
General Counsel  
Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678

**13.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

**13.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.

**13.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Contractor agree to resolve the dispute in accordance with the following:

- 13.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
- 13.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 13.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 13.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 13.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 13.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

**13.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Contractor's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Contractor's Proposal, the Purchase Order shall control.

**13.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**13.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

**13.15 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Contractor provide Work to an Agency member, SCLPA or SCLPA member (collectively for the purpose of this section only "Member") pursuant to Section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the Purchase Order and Requested Work relating to such Member.

The Parties have executed this Agreement as of the date signed by the Agency.

NORTHERN CALIFORNIA POWER AGENCY

SCHNEIDER ELECTRIC USA, INC.

Date \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
**RANDY S. HOWARD,**  
General Manager

\_\_\_\_\_  
**EDWIN STADELMAN,**  
Director West Region – US Service Sales

Attest:

\_\_\_\_\_  
Assistant Secretary of the Commission

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

## EXHIBIT A

### SCOPE OF WORK

Schneider Electric USA, Inc. ("Contractor") shall provide electrical services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA members. Design and engineering services under this Agreement may be performed by an affiliate entity such that the affiliated entity is duly licensed to perform engineering in the jurisdiction where the services are offered and the affiliated entity is specifically identified on the Purchase Order.

Services to include, but not be limited to the following:

#### Engineering Services

- Studies – Arc Flash, Short Circuit and Coordination
- Solutions for OSHA and NFPA 70E Compliance, including Arc Flash Mitigation Solutions
- Power System Design and Upgrades
- Power System Assessment Services
- Power System Analytical Studies

#### New Equipment Services

- Start-Up and Commissioning
- Spare Parts
- Extended Warranty
- Advantage Service Plans – Multi Year Service Plans
- Engineering Analysis
  - » Time-current Coordination Analysis
  - » Short Circuit Analysis
  - » Arc Flash Analysis
- Training Services

#### Maintenance and Testing Services

- Preventive Maintenance and Testing
- Predictive Maintenance Solutions – Design and Installation
  - » Infrared Windows
  - » Wireless Temperature Monitoring System (WTMS)
  - » Optical Arc Flash Mitigation
  - » Partial Discharge Monitoring
- Advantage Service Plans
- Additional Services
  - » Circuit Breaker Testing
  - » D.C. High Potential Testing
  - » Grounding System Testing
  - » Relay and Metering Testing and Calibration
  - » Rotating Equipment
  - » Variable Frequency Drive and Soft-start Work

» UPS and Battery Maintenance

Modernization and Upgrade Solutions

- Switchgear Modernization Solutions
- Motor Control Center Upgrades
- Additional Services

On-demand and Emergency Services

- Rapid response - 24/7
- Temporary Generator Connection
- Emergency Action Plan
- In case of emergency, call: **844-362-6387**

No project under this Agreement shall include Work that would qualify as a Public Works Project under the California Public Contract Code.

## **EXHIBIT B**

### **COMPENSATION SCHEDULE AND HOURLY FEES**

Compensation for all work, including hourly fees and expenses, shall not exceed the amount set forth in Section 2 hereof. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

Class or Title	Straight	Overtime	Premium	Hourly –Emergency
In-shop Technician or Senior Technician	\$140	\$210	\$280	2X Applicable Rate
Field Service Representative	\$205	\$305	\$410	2X Applicable Rate
Project Manager, Power System Engineer, Or Application Engineer	\$240	\$360	\$480	2X Applicable Rate
Power Consultant or Principal Engineer	\$270	\$400	\$540	2X Applicable Rate

### Work Classifications

Following are examples of work performed by Class/Title (including, but not limited to):

- *In-shop Technician (or Senior Technician):* C-5 Breaker Reconditioning
- *Field Service Engineer/Representative:* Equipment Startup, Breaker Replacements, Equipment Reconditioning, Testing
- *Project Manager/Power System Engineer/Application Engineer:* System Studies, Arc Flash Analysis, Electrical System Design, Project Management
- *Power Consultant or Principal Engineer:* Large/Complex Project System Design

### Rates

Hourly rates apply to travel time, work time and any stand-by time. Travel time is calculated starting at the departure from the service engineer's location or factory to and from the job.

- **All Services' rates are quoted in U.S. dollars.**
- **Rates are not valid unless accompanied by a formal quotation.**
- **There is a \$500 minimum charge for all equipment orders.**
- **The minimum billing for services performed on a single order will be eight (8) hours charged at the applicable rate**
- **Schneider Electric Services reserves the right to apply cancellation charges for cancelled services, including time and expenses incurred at the applicable rates for the scheduled service.**  
Cancellation charges shall include time and expenses incurred at applicable rates, charges incurred from third parties as a result of such termination, and equipment re-stocking charges equal to Schneider Electric usual and customary restocking charges to its distributors. A \$1,000 minimum charge will apply to any services cancelled within 48 hours of the date service was scheduled to commence.

**Straight Time Rates** – Any 8-hour period between the hours of 06:00 and 18:00 local time, Monday-Friday.

**Overtime Rates** – Work, travel and/or stand-by rates in excess of 8 hours but not exceeding 12 hours outside the normal (straight time) working hours (holidays excluded).



**Premium Rates** – Work, travel, and/or stand-by on Sundays and holidays and all time in excess of 12 hours on other days until there is an 8-hour break in the work schedule.

**Emergency Rates** – Two times (2X) any applicable rate. Applies to all **unscheduled work\*** or work done under unusual circumstances causing Schneider Electric Services to interrupt their existing schedules. (\*Unscheduled work is work not previously scheduled at least three (3) working days prior to the date required for work to commence, unless agreed to in writing.)

- 2X straight time 8-hour period is between 06:00 and 18:00, Monday-Friday
- 2X overtime for work in excess of 8 hours Monday-Friday and Saturday
- 2X premium of Sundays and holidays

## **Expenses**

**Travel** – All travel and living expenses will be invoiced at cost plus 15%, except for airfare which will be subject to a 15% admin charge to a maximum of \$75.00.

**Specialized Tools and Test Equipment** – Small tools not normally required or carried by Schneider Electric Services will be invoiced at cost. Specialized test equipment will be invoiced at current rental rates, when required.

**Material Mark-Up** – Outsourced material will have a mark-up of 25% for scheduled work and 35% for unscheduled work. (\*Unscheduled work is work not previously scheduled at least three (3) working days prior to the date required for work to commence, unless agreed to in writing.)

Pricing for services to be performed at NCPA Member or SCPPA locations will be quoted at the time services are requested.

NOTE: As a public agency, NCPA shall not reimburse Contractor for travel, food and related costs in excess of those permitted by the Internal Revenue Service.

**EXHIBIT C**

**CERTIFICATION**

**Affidavit of Compliance for Contractors**

I,

---

(Name of person signing affidavit) (Title)

do hereby certify that background investigations to ascertain the accuracy of the identity and employment history of all employees of

Schneider Electric USA, Inc.

(Company name)

for contract work at:

LODI ENERGY CENTER, 12745 N. THORNTON ROAD, LODI, CA 95242

(Project name and location)

have been conducted as required by the California Energy Commission Decision for the above-named project.

---

(Signature of officer or agent)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

THIS AFFIDAVIT OF COMPLIANCE SHALL BE APPENDED TO THE PROJECT SECURITY PLAN AND SHALL BE RETAINED AT ALL TIMES AT THE PROJECT SITE FOR REVIEW BY THE CALIFORNIA ENERGY COMMISSION COMPLIANCE PROJECT MANAGER.

**NOT APPLICABLE**

**EXHIBIT D**

**CERTIFICATION**

**Affidavit of Compliance for Hazardous Materials Transport Vendors**

I, \_\_\_\_\_,

(Name of person signing affidavit)(Title)

do hereby certify that the below-named company has prepared and implemented security plans in conformity with 49 CFR 172, subpart I and has conducted employee background investigations in conformity with 49 CFR 172.802(a), as the same may be amended from time to time,

\_\_\_\_\_

(Company name)

for hazardous materials delivery to:

LODI ENERGY CENTER, 12745 N. THORNTON ROAD, LODI, CA 95242

(Project name and location)

as required by the California Energy Commission Decision for the above-named project.

\_\_\_\_\_  
(Signature of officer or agent)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

THIS AFFIDAVIT OF COMPLIANCE SHALL BE APPENDED TO THE PROJECT SECURITY PLAN AND SHALL BE RETAINED AT ALL TIMES AT THE PROJECT SITE FOR REVIEW BY THE CALIFORNIA ENERGY COMMISSION COMPLIANCE PROJECT MANAGER.

**EXHIBIT E**

**ATTACHMENT A [from MLA]  
AGREEMENT TO BE BOUND**

**MAINTENANCE LABOR AGREEMENT ATTACHMENT  
LODI ENERGY CENTER PROJECT**

The undersigned hereby certifies and agrees that:

- 1) It is an Employer as that term is defined in Section 1.4 of the Lodi Energy Center Project Maintenance Labor Agreement ("Agreement" solely for the purposes of this Exhibit E) because it has been, or will be, awarded a contract or subcontract to assign, award or subcontract Covered Work on the Project (as defined in Section 1.2 and 2.1 of the Agreement), or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.
- 2) In consideration of the award of such contract or subcontract, and in further consideration of the promises made in the Agreement and all attachments thereto (a copy of which was received and is hereby acknowledged), it accepts and agrees to be bound by the terms and condition of the Agreement, together with any and all amendments and supplements now existing or which are later made thereto.
- 3) If it performs Covered Work, it will be bound by the legally established trust agreements designated in local master collective bargaining agreements, and hereby authorizes the parties to such local trust agreements to appoint trustees and successor trustee to administer the trust funds, and hereby ratifies and accepts the trustees so appointed as if made by the undersigned.
- 4) It has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of the Agreement.
- 5) It will secure a duly executed Agreement to be Bound, in form identical to this document, from any Employer(s) at any tier or tiers with which it contracts to assign, award, or subcontract Covered Work, or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.

DATED: \_\_\_\_\_ Name of Employer \_\_\_\_\_

\_\_\_\_\_  
(Authorized Officer & Title)

\_\_\_\_\_  
(Address)



## **Lodi Energy Center Project Participant Committee Staff Report**

AGENDA ITEM NO.: 10

**Date:** January 2, 2019

**Meeting Date:** January 7, 2019

**To:** Lodi Energy Center Project Participant Committee

**Subject:** Irani Engineering, Inc. – Five Year Multi-Task General Services Agreement;  
Applicable to the following projects: All NCPA locations and Members, SCPPA,  
and SCPPA Members

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### Proposal

Approve the Multi-Task Consulting Services Agreement with Irani Engineering, Inc. for injection well related consulting services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,000,000 over 5 years for use at all facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA Members.

### Background

Injection well related consulting services are required from time to time related to project support at facilities owned and/or operated by NCPA, its Members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA Members.

### Selection Process

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has a similar agreement in place with Utility System Efficiencies and seeks bids from multiple qualified providers whenever services are needed. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

### Fiscal Impact

Upon execution, the total cost of the agreement is not-to-exceed \$2,000,000 over five years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

### 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 the California Environmental Quality Act. No environmental review is necessary.

Submitted by:

KEN SPEER  
Assistant General Manager  
Generation Services

Attachments: (1)

- Multi-Task Consulting Services Agreement with Irani Engineering, Inc.



**MULTI-TASK CONSULTING SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
IRANI ENGINEERING, INC.**

This Consulting Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Irani Engineering, Inc., a California corporation with its office located at 35131 Beach Road, Capistrano Beach, CA 92624 ("Consultant") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 20\_\_ ("Effective Date") in Roseville, California.

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to Agency the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein ("Services"), at the time and place and in the manner specified therein.

- 1.1 Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end when Consultant completes the Services, or no later than five (5) year from the date this Agreement was signed by Agency, whichever is shorter.
- 1.2 Standard of Performance.** Consultant shall perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged and for which Consultant is providing the Services. Consultant represents that it is licensed, qualified and experienced to provide the Services set forth herein.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform the Services. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, requests the reassignment of any such personnel, Consultant shall, immediately upon receiving written notice from Agency of such request, reassign such personnel.
- 1.4 Services Provided.** Services provided under this Agreement by Consultant may include Services directly to the Agency or, as requested by the Agency and consistent with the terms of this Agreement, to Agency members, Southern California Public Power Authority ("SCPPA") or SCPPA members.
- 1.5 Request for Services.** At such time that Agency determines to use Consultant's Services under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific services to be performed ("Requested Services"), may include a not-to-exceed monetary cap on Requested Services and expenditures authorized by that Purchase Order, and a time by which the Requested Services shall be completed. Consultant shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that Consultant chooses not to perform the Requested Services. If Consultant agrees to perform the Requested Services, begins to perform the Requested Services, or does not respond within the seven day

period specified, then Consultant will have agreed to perform the Requested Services on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

**Section 2. COMPENSATION.** Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED** TWO MILLION dollars (\$2,000,000.00) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

**2.1 Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- The beginning and ending dates of the billing period;
- Services performed;
- The Purchase Order number authorizing the Services;
- At Agency's option, the total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder; and
- At Agency's option, when the Consultant's Scope of Work identifies tasks, for each work item in each task, a copy of the applicable time entries showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense, with supporting documentation, to Agency's reasonable satisfaction.

Invoices shall be sent to:

Northern California Power Agency  
651 Commerce Drive  
Roseville, California 95678  
Attn: Accounts Payable  
[AcctsPayable@ncpa.com](mailto:AcctsPayable@ncpa.com)

**2.2 Monthly Payment.** Agency shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

**2.3 Payment of Taxes.** Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.



**2.4 Authorization to Perform Services.** The Consultant is not authorized to perform any Services or incur any costs whatsoever under the terms of this Agreement until receipt of written authorization from the Contract Administrator.

**2.5 Timing for Submittal of Final Invoice.** Consultant shall have ninety (90) days after completion of its Services to submit its final invoice for the Requested Services. In the event Consultant fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Consultant is deemed to have waived its right to collect its final payment from Agency.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the Services.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance listed below and shall maintain the types and amounts of insurance listed below for the period covered by this Agreement.

**4.1 Workers' Compensation.** If Consultant employs any person, Consultant shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant with limits of not less than one million dollars (\$1,000,000.00) per accident.

**4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 Commercial General Insurance.** Consultant shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Consultant. The policy shall provide a minimum limit of \$1,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$100,000. No endorsement shall be attached limiting the coverage.

**4.2.2 Automobile Liability.** Consultant shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Consultant, on or off Agency premises. The policy shall provide a minimum limit of \$1,000,000 per each accident, with a self-insured retention or deductible of no more than \$100,000. This insurance shall provide contractual liability covering all motor vehicles and

mobile equipment to the extent coverage may be excluded from general liability insurance.

**4.2.3 General Liability/Umbrella Insurance.** The coverage amounts set forth above may be met by a combination of underlying and umbrella policies as long as in combination the limits equal or exceed those stated.

**4.3 Professional Liability Insurance.** Consultant shall maintain professional liability insurance appropriate to Consultant's profession performing work in connection with this Agreement in an amount not less than one million dollars (\$1,000,000.00) and one million dollars (\$1,000,000) aggregate covering the Consultant's errors and omissions. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000) per claim. Such insurance shall be on a "claims-made" basis, subject to the following conditions: (1) the retroactive date of the policy shall be on or before the Effective Date of this Agreement; (2) the policy shall be maintained for at least five (5) years after completion of the Services and, if requested by Agency, evidence of coverage shall be provided during this period; and (3) if, within five (5) years of completion of the Services, coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Agreement, Consultant shall purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services and, if requested by Agency, provide evidence of coverage during this period.

**4.4 All Policies Requirements.**

**4.4.1 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the policies referenced in Section 4.2, adding the Agency as an additional insured and declaring such insurance primary in regard to work performed pursuant to this Agreement.

**4.4.2 Notice of Reduction in or Cancellation of Coverage.** Consultant shall provide at least thirty (30) days prior written notice to Agency of any reduction in scope or amount, cancellation, or modification adverse to Agency of the policies referenced in Section 4.

**4.4.3 Higher Limits.** If Consultant maintains higher limits than the minimums specified herein, the Agency shall be entitled to coverage for the higher limits maintained by the Consultant.

**4.4.4 Additional Certificates and Endorsements.** If Consultant provides services to Agency members, SCPPA, and/or SCPPA members pursuant to this Agreement, Consultant shall provide certificates of insurance and

policy endorsements, as referenced in Section 4.4.1, naming the specific Agency member, SCPA or SCPA member.

**4.5.5 Waiver of Subrogation.** Consultant agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. In addition, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Consultant, its employees, agents and subcontractors.

**4.6 Consultant's Obligation.** Consultant shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Services are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this Agreement. Consultant shall also ensure that all workers involved in the provision of Services are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

## **Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.**

**5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

**5.2 Scope.** Consultant shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency and its officials, commissioners, officers, employees, and volunteers from and against any and all claims that arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the Consultant in its performance of Services under this Agreement. Consultant shall bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such claims, whether directly or indirectly ("Liabilities"). Such obligations to defend, hold harmless and indemnify the Agency shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the Agency.

## **Section 6. STATUS OF CONSULTANT.**

**6.1 Independent Contractor.** Consultant is an independent contractor and not an employee of Agency. Agency shall have the right to control Consultant only

insofar as the results of Consultant's Services and assignment of personnel pursuant to Section 1; otherwise, Agency shall not have the right to control the means by which Consultant accomplishes Services rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.

Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Consultant and Agency acknowledge and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's estimated costs of providing the Services, including salaries and benefits of employees, agents and subcontractors of Consultant.

Consultant shall indemnify, defend, and hold harmless Agency from any lawsuit, administrative action, or other claim for penalties, losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such claims, whether directly or indirectly, due to Consultant's failure to secure workers' compensation insurance for its employees, agents, or subcontractors.

Consultant agrees that it is responsible for the provision of group healthcare benefits to its fulltime employees under 26 U.S.C. § 4980H of the Affordable Care Act. To the extent permitted by law, Consultant shall indemnify, defend and hold harmless Agency from any penalty issued to Agency under the Affordable Care Act resulting from the performance of the Services by any employee, agent, or subcontractor of Consultant.

- 6.2 Consultant Not Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement

was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Agency. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Consultant shall supervise all work subcontracted by Consultant in performing the services and shall be responsible for all work performed by a subcontractor as if Consultant itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Consultant from any of its obligations under this Agreement with respect to the services and Consultant is obligated to ensure that any and all subcontractors performing any services shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.

- 6.4     Certification as to California Energy Commission.** If requested by the Agency, Consultant shall, at the same time it executes this Agreement, execute Exhibit C.

## **Section 7.     LEGAL REQUIREMENTS.**

- 7.1     Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2     Compliance with Applicable Laws.** Consultant and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3     Licenses and Permits.** Consultant represents and warrants to Agency that Consultant and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.

## **Section 8.     TERMINATION AND MODIFICATION.**

- 8.1     Termination.** Agency may cancel this Agreement at any time and without cause upon ten (10) days prior written notice to Consultant.

In the event of termination, Consultant shall be entitled to compensation for Services satisfactorily completed as of the effective date of termination; Agency, however, may condition payment of such compensation upon Consultant delivering to Agency any or all records or documents, as referenced in Section 9.1 hereof.

- 8.2 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.3 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Consultant shall survive the termination of this Agreement.
- 8.4 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, Agency's remedies shall include, but not be limited to, the following:
- 8.4.1** Immediately terminate the Agreement;
  - 8.4.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
  - 8.4.3** Retain a different consultant to complete the Services not finished by Consultant; and/or
  - 8.4.4** Charge Consultant the difference between the costs to complete the Services that is unfinished at the time of breach and the amount that Agency would have paid Consultant pursuant hereto if Consultant had completed the Services.

**Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Consultant hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Consultant agree that, unless approved by Agency in writing, Consultant shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.
- 9.2 Consultant's Books and Records.** Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Consultant to maintain shall be made available for

inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.

#### **9.4 Confidential Information and Disclosure.**

**9.4.1 Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as confidential Information in accordance with this section.

**9.4.2 Non-Disclosure of Confidential Information.** During the term of this Agreement, either party may disclose ("The Disclosing Party") confidential Information to the other party ("the Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in confident; and (b) shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Confidential Information.

**9.4.3 Permitted Disclosure.** Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. Disclosing Party may seek a protective order, including without limitation, a temporary restraining order to prevent or contest such permitted disclosure; provided, however, that Disclosing Party shall seek such remedies at its sole expense. Neither party shall have any liability for such permitted disclosures:

**9.4.3.1** Disclosure to employees, agents, consultants, contractors, subcontractors or other representatives of Receiving Party that have a need to know in connection with this Agreement.

**9.4.3.2** Disclosure in response to a valid order of a court, government or regulatory agency or as may otherwise be required by law; and

**9.4.3.3** Disclosure by Agency in response to a request pursuant to the California Public Records Act.

**9.4.4 Handling of Confidential Information.** Upon conclusion or termination of the Agreement, Receiving Party shall return to Disclosing Party or destroy Confidential Information (including all copies thereof), if requested by Disclosing Party in writing. Notwithstanding the foregoing, the Receiving Party may retain copies of such Confidential Information, subject to the confidentiality provisions of this Agreement: (a) for archival purposes in its computer system; (b) in its legal department files; and (c) in files of Receiving Party's representatives where such copies are necessary to comply with applicable law. Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

## **Section 10. MISCELLANEOUS PROVISIONS.**

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other 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.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.



- 10.6 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

- 10.7 Contract Administrator.** This Agreement shall be administered by Ken Speer, Assistant General Manager, or his/her designee, who shall act as the Agency’s representative. All correspondence shall be directed to or through the representative.

- 10.8 Notices.** Any written notice to Consultant shall be sent to:

Irani Engineering, Inc.  
Attention: Saeed Irani  
35131 Beach Road  
Capistrano Beach, CA 92624

Any written notice to Agency shall be sent to:

Randy S. Howard  
General Manager  
Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678

With a copy to:

Jane E. Luckhardt  
General Counsel  
Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678

- 10.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

**10.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.

**10.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Consultant agree to resolve the dispute in accordance with the following:

- 10.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
- 10.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 10.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 10.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 10.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 10.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

**10.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Consultant's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Consultant's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Consultant's Proposal, the Purchase Order shall control.

**10.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**10.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

**10.15 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Consultant provide Services to an Agency member, SCCPA and/or a SCPPA member (collectively for the purposes of this section only "Member") pursuant to section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the Purchase Order and Requested Services relating to such Member.

The Parties have executed this Agreement as of the date signed by the Agency.

NORTHERN CALIFORNIA POWER AGENCY

IRANI ENGINEERING, INC.

Date\_\_\_\_\_

Date\_\_\_\_\_

\_\_\_\_\_  
**RANDY S. HOWARD,**  
General Manager

\_\_\_\_\_  
**SAEED IRANI,**  
President

Attest:

\_\_\_\_\_  
Assistant Secretary of the Commission

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

**EXHIBIT A**  
**SCOPE OF SERVICES**

Irani Engineering, Inc. ("Consultant") shall provide injection well related consulting services as requested by the Northern California Power Agency ("Agency") at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA) or SCPPA Members.

Services to include, but not be limited to the following:

- Injection Well Consulting
- Injection Well Maintenance Supervision
- Injection Well Acidizing/Cleaning Supervision
- Surveys

## EXHIBIT B

### COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed amount as set forth in Section 2 of this Agreement. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

#### WELLSITE SUPERVISION:

Location Supervisor : Drilling	\$1,600.00 per day
Workover	\$1,500.00 per day

<u>ENGINEERING &amp; CONSULTING- HOURLY RATES:</u>	\$185.00 per hour
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#### WELLSITE COMMUNICATIONS:

Dedicated Cellular Phone & Computer & internet	\$50.00 per day
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#### TRAVEL EXPENSES:

Meals per diem (day rate minimum)	\$50.00 per day
Mileage	\$2.00 per mile
Lodging	\$ at Cost, if required

Other Travel (airfare, rental cars, taxis, incidentals)	\$ at Cost
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#### OTHER SERVICES & FEES:

3 <sup>rd</sup> Party Vendor Charges	\$ at Cost plus 15%
Miscellaneous Office (copies, express mail, phone)	\$ at Cost

Pricing for services to be performed at NCPA Member or SCPPA locations will be quoted at the time services are requested.

NOTE: As a public agency, NCPA shall not reimburse Consultant for travel, food and related costs in excess of those permitted by the Internal Revenue Service.

**EXHIBIT C**  
**CERTIFICATION**

**Affidavit of Compliance for Contractors**

I, ARDESHIR (SAEED) IRANI  
(Name of person signing affidavit)(Title)

do hereby certify that background investigations to ascertain the accuracy of the identity and employment history of all employees of

Irani Engineering, Inc.  
(Company name)

for contract work at:

LODI ENERGY CENTER, 12745 N. THORNTON ROAD, LODI, CA 95242

(Project name and location)

have been conducted as required by the California Energy Commission Decision for the above-named project.

\_\_\_\_\_  
(Signature of officer or agent)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

THIS AFFIDAVIT OF COMPLIANCE SHALL BE APPENDED TO THE PROJECT SECURITY PLAN AND SHALL BE RETAINED AT ALL TIMES AT THE PROJECT SITE FOR REVIEW BY THE CALIFORNIA ENERGY COMMISSION COMPLIANCE PROJECT MANAGER.



## **Lodi Energy Center Project Participant Committee Staff Report**

AGENDA ITEM NO.: 11

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**Date:** January 2, 2019

**Meeting Date:** January 7, 2019

**To:** Lodi Energy Center Project Participant Committee

**Subject:** Pullman Heating & Cooling, Inc. – Five Year Multi-Task General Services Agreement for Maintenance Services; Applicable to the following projects: All NCPA locations and Members, SCPPA, and SCPPA Members

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### Proposal

Approve the Multi-Task General Services Agreement with Pullman Heating & Cooling, Inc. for miscellaneous maintenance services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$500,000 over five years for use at all facilities owned and/or operated by NCPA, its members, by the Southern California Public Power Authority ("SCPPA"), or by SCPPA Members.

### Background

Miscellaneous maintenance services are required from time to time at various NCPA locations, NCPA Members, SCPPA, and SCPPA Member facilities, which include but are not limited to miscellaneous heating, ventilation and air-conditioning ("HVAC"). Pullman Heating & Cooling, Inc. is a provider of these services.

### Selection Process

This five year contract does not commit NCPA to any expenditure of funds. When these services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has in place other enabling agreements with Indoor Environmental Services and ACCO Engineered Systems for similar services. NCPA will seek bids from as many qualified providers as possible and enter into additional enabling agreements as needed. The bid is awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

### Fiscal Impact

Upon execution, the total cost of the agreement is not-to-exceed \$500,000 over five years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

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 the California Environmental Quality Act. No environmental review is necessary.

Submitted by:

KEN SPEER  
Assistant General Manager  
Generation Services

Attachments: (1)

- Multi-Task General Services Agreement with Pullman Heating & Cooling, Inc.





**MULTI-TASK  
GENERAL SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
PULLMAN HEATING & COOLING, INC.**

This Multi-Task General Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Pullman Heating & Cooling, Inc., a corporation with its office located at 20630 Honey Hill Drive, Hidden Valley, CA 95467 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2019 ("Effective Date") in Roseville, California.

**Section 1. SCOPE OF WORK.** Subject to the terms and conditions set forth in this Agreement, Contractor is willing to provide to Agency the range of services and/or goods described in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").

- 1.1 Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end when Contractor completes the Work, or no later than five (5) years from the date this Agreement was signed by Agency, whichever is shorter.
- 1.2 Standard of Performance.** Contractor shall perform the Work in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged and for which Contractor is providing the Work. Contractor represents that it is licensed, qualified and experienced to provide the Work set forth herein.
- 1.3 Assignment of Personnel.** Contractor shall assign only competent personnel to perform the Work. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, requests the reassignment of any such personnel, Contractor shall, immediately upon receiving written notice from Agency of such request, reassign such personnel.
- 1.4 Work Provided.** Work provided under this Agreement by Contractor may include Work directly to the Agency or, as requested by the Agency and consistent with the terms of this Agreement, to Agency members, Southern California Public Power Authority ("SCPPA") or SCPPA members.
- 1.5 Request for Work to be Performed.** At such time that Agency determines to have Contractor perform Work under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific Work to be performed ("Requested Work"), may include a not-to-exceed cap on monetary cap on Requested Work and all related expenditures authorized by that Purchase Order, and shall include a time by which the Requested Work shall be completed. Contractor shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that Contractor chooses not to perform the Requested Work. If Contractor agrees to perform the Requested Work, begins to perform the Requested Work, or does not respond within the seven day period specified, then Contractor will have

agreed to perform the Requested Work on the terms set forth in the Purchase Order, this Agreement and its Exhibits.

**Section 2. COMPENSATION.** Agency hereby agrees to pay Contractor an amount **NOT TO EXCEED** FIVE HUNDRED THOUSAND dollars (\$500,000) for the Work, which shall include all fees, costs, expenses and other reimbursables, as set forth in Contractor's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Contractor, but is merely a limit of potential Agency expenditures under this Agreement.

**2.1 Invoices.** Contractor shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- The beginning and ending dates of the billing period;
- Work performed;
- The Purchase Order number authorizing the Requested Work;
- At Agency's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense, with supporting documentation, to Agency's reasonable satisfaction;
- At Agency's option, the total number of hours of work performed under the Agreement by Contractor and each employee, agent, and subcontractor of Contractor performing work hereunder.

Invoices shall be sent to:

Northern California Power Agency  
651 Commerce Drive  
Roseville, California 95678  
Attn: Accounts Payable  
[AcctsPayable@ncpa.com](mailto:AcctsPayable@ncpa.com)

**2.2 Monthly Payment.** Agency shall make monthly payments, based on invoices received, for Work satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Contractor.

**2.3 Payment of Taxes.** Contractor is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.

**2.4 Authorization to Perform Work.** The Contractor is not authorized to perform any Work or incur any costs whatsoever under the terms of this Agreement until receipt of a Purchase Order from the Contract Administrator.

- 2.5 Timing for Submittal of Final Invoice.** Contractor shall have ninety (90) days after completion of the Requested Work to submit its final invoice for the Requested Work. In the event Contractor fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Contractor is deemed to have waived its right to collect its final payment for the Requested Work from Agency.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Contractor shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the Work.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any Work under this Agreement, Contractor, at its own cost and expense, shall procure the types and amounts of insurance listed below and shall maintain the types and amounts of insurance listed below for the period covered by this Agreement.

- 4.1 Workers' Compensation.** If Contractor employs any person, Contractor shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor with limits of not less than one million dollars (\$1,000,000.00) per accident.

**4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 Commercial General Insurance.** Contractor shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Contractor. The policy shall provide a minimum limit of \$1,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than \$100,000. No endorsement shall be attached limiting the coverage.

**4.2.2 Automobile Liability.** Contractor shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Contractor, on or off Agency premises. The policy shall provide a minimum limit of \$1,000,000 per each accident, with a self-insured retention or deductible of no more than \$100,000. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

**4.2.3 General Liability/Umbrella Insurance.** The coverage amounts set forth above may be met by a combination of underlying and umbrella policies as long as in combination the limits equal or exceed those stated.

**4.3 Professional Liability Insurance.** Intentionally Omitted

**4.4 Pollution Insurance.** Intentionally Omitted

**4.5 All Policies Requirements.**

**4.5.1 Verification of coverage.** Prior to beginning any work under this Agreement, Contractor shall provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the policies referenced in Section 4.2 and in Section 4.4, if applicable, adding the Agency as an additional insured and declaring such insurance primary in regard to work performed pursuant to this Agreement.

**4.5.2 Notice of Reduction in or Cancellation of Coverage.** Contractor shall provide at least thirty (30) days prior written notice to Agency of any reduction in scope or amount, cancellation, or modification adverse to Agency of the policies referenced in Section 4.

**4.5.3 Higher Limits.** If Contractor maintains higher limits than the minimums specified herein, the Agency shall be entitled to coverage for the higher limits maintained by the Contractor.

**4.5.4 Additional Certificates and Endorsements.** If Contractor performs Work for Agency members, SCPPA and/or SCPPA members pursuant to this Agreement, Contractor shall provide the certificates of insurance and policy endorsements, as referenced in Section 4.5.1, naming the specific Agency member, SCPPA and/or SCPPA member for which the Work is to be performed.

**4.5.5 Waiver of Subrogation.** Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. In addition, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Contractor, its employees, agents and subcontractors.

**4.6 Contractor's Obligation.** Contractor shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Work are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this Agreement. Contractor shall also ensure that all workers involved in the provision of Work are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

## **Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.**

- 5.1 Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this section and that it is a material element of consideration.
- 5.2 Scope.** Contractor shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from and against all losses, liabilities, claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including without limitation costs and fees of litigation), judgments and causes of action of every nature arising out of or in connection with any acts or omissions by Contractor, its officers, officials, agents, and employees, except as caused by the sole or gross negligence of Agency. Notwithstanding, should this Agreement be construed as a construction agreement under Civil Code section 2783, then the exception referenced above shall also be for the active negligence of Agency.
- 5.3 Transfer of Title.** Intentionally Omitted

## **Section 6. STATUS OF CONTRACTOR.**

- 6.1 Independent Contractor.** Contractor is an independent contractor and not an employee of Agency. Agency shall have the right to control Contractor only insofar as the results of Contractor's Work and assignment of personnel pursuant to Section 1; otherwise, Agency shall not have the right to control the means by which Contractor accomplishes Work rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.

Contractor shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Contractor and Agency acknowledge and agree that compensation paid by Agency to Contractor under this Agreement is based upon Contractor's estimated costs of providing the Work, including salaries and benefits of employees, agents and subcontractors of Contractor.

Contractor shall indemnify, defend, and hold harmless Agency from any lawsuit, administrative action, or other claim for penalties, losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such claims, whether directly or indirectly, due to Contractor's failure to secure workers' compensation insurance for its employees, agents, or subcontractors.

Contractor agrees that it is responsible for the provision of group healthcare benefits to its fulltime employees under 26 U.S.C. § 4980H of the Affordable Care Act. To the extent permitted by law, Contractor shall indemnify, defend and hold harmless Agency from any penalty issued to Agency under the Affordable Care Act resulting from the performance of the Services by any employee, agent, or subcontractor of Contractor.

- 6.2 Contractor Not Agent.** Except as Agency may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Agency. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Contractor shall supervise all work subcontracted by Contractor in performing the Work and shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Contractor from any of its obligations under this Agreement with respect to the Work and Contractor is obligated to ensure that any and all subcontractors performing any Work shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.
- 6.4 Certification as to California Energy Commission.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit C.
- 6.5 Certification as to California Energy Commission Regarding Hazardous Materials Transport Vendors.** If requested by the Agency, Contractor shall, at the same time it executes this Agreement, execute Exhibit D.
- 6.6 Maintenance Labor Agreement.** If the Work is subject to the terms of one or more Maintenance Labor Agreements, which are applicable only to certain types

of construction, repair and/or maintenance projects, then Contractor shall execute Exhibit E and/or similar documentation as to compliance.

## **Section 7. LEGAL REQUIREMENTS.**

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Contractor and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Licenses and Permits.** Contractor represents and warrants to Agency that Contractor and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.
- 7.4 Monitoring by DIR.** The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 7.5 Registration with DIR.** During the term of this Agreement, Contractor warrants that it is registered with the Department of Industrial Relations and qualified to perform Work consistent with Labor Code section 1725.5.
- 7.6 Prevailing Wage Rates.** In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed; the Agency has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project; and copies of the prevailing rate of per diem wages are on file at the Agency and will be made available on request. Throughout the performance of the Work, Contractor must comply with all applicable laws and regulations that apply to wages earned in performance of the Work. Contractor assumes all responsibility for such payments and shall defend, indemnify and hold the Agency harmless from any and all claims made by the State of California, the Department of Industrial Relations, any subcontractor, any worker or any other third party with regard thereto.

Additionally, in accordance with the California Administrative Code, Title 8, Group 3, Article 2, Section 16000, Publication of Prevailing Wage Rates by Awarding

Bodies, copies of the applicable determination of the Director can be found on the web at: <http://www.dir.ca.gov/DLSR/PWD/> and may be reviewed at any time.

Contractor shall be required to submit to the Agency during the contract period, copies of Public Works payroll reporting information per California Department of Industrial Relations, Form A- 1-131 (New 2-80) concerning work performed under this Agreement.

Contractor shall comply with applicable law, including Labor Code Sections 1774 and 1775. In accordance with Section 1775, Contractor shall forfeit as a penalty to Agency \$50.00 for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for such work or craft in which such worker is employed for any Work done under the Agreement by Contractor or by any subcontractor under Contractor in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 *et seq.* In addition to the penalty and pursuant to Section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor.

## **Section 8. TERMINATION AND MODIFICATION.**

- 8.1 Termination.** Agency may cancel this Agreement at any time and without cause upon ten (10) days prior written notice to Contractor.

In the event of termination, Contractor shall be entitled to compensation for Work satisfactorily completed as of the effective date of termination; Agency, however, may condition payment of such compensation upon Contractor delivering to Agency any or all records or documents (as referenced in Section 9.1 hereof).

- 8.2 Amendments.** The Parties may amend this Agreement only by a writing signed by both of the Parties.

- 8.3 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Contractor shall survive the termination of this Agreement.

- 8.4 Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, Agency's remedies shall include, but not be limited to, the following:

**8.4.1** Immediately terminate the Agreement;

**8.4.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;



- 8.4.3** Retain a different Contractor to complete the Work not finished by Contractor; and/or
- 8.4.4** Charge Contractor the difference between the costs to complete the Work that is unfinished at the time of breach and the amount that Agency would have paid Contractor pursuant hereto if Contractor had completed the Work.

**Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Contractor hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Contractor agree that, unless approved by Agency in writing, Contractor shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents.
- 9.2 Contractor's Books and Records.** Contractor shall maintain any and all records or other documents evidencing or relating to charges for Work or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor under this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under this Agreement.
- 9.4 Confidential Information and Disclosure.**
- 9.4.1 Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality

agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as Confidential Information in accordance with this section.

**9.4.2 Non-Disclosure of Confidential Information.** During the term of this Agreement, either party may disclose (the "Disclosing Party") Confidential Information to the other party (the "Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in confidence; and (b) shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Confidential Information.

**9.4.3 Permitted Disclosure.** Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. Disclosing Party may seek a protective order, including without limitation, a temporary restraining order to prevent or contest such permitted disclosure; provided, however, that Disclosing Party shall seek such remedies at its sole expense. Neither party shall have any liability for such permitted disclosures:

**9.4.3.1** Disclosure to employees, agents, contractors, subcontractors or other representatives of Receiving Party that have a need to know in connection with this Agreement.

**9.4.3.2** Disclosure in response to a valid order of a court, government or regulatory agency or as may otherwise be required by law; and

**9.4.3.3** Disclosure by Agency in response to a request pursuant to the California Public Records Act.

**9.4.4 Handling of Confidential Information.** Upon conclusion or termination of the Agreement, Receiving Party shall return to Disclosing Party or destroy Confidential Information (including all copies thereof), if requested by Disclosing Party in writing. Notwithstanding the foregoing, the Receiving Party may retain copies of such Confidential Information, subject to the confidentiality provisions of this Agreement: (a) for archival purposes in its computer system; (b) in its legal department files; and (c) in files of Receiving Party's representatives where such copies are necessary to comply with applicable law. Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

## **Section 10. PROJECT SITE.**

- 10.1 Operations at the Project Site.** Each Project site may include the power plant areas, all buildings, offices, and other locations where Work is to be performed, including any access roads. Contractor shall perform the Work in such a manner as to cause a minimum of interference with the operations of the Agency; if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4; and other contractors at the Project site and to protect all persons and property thereon from damage or injury. Upon completion of the Work at a Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish, stemming from or relating to Contractor's Work.
- 10.2 Contractor's Equipment, Tools, Supplies and Materials.** Contractor shall be solely responsible for the transportation, loading and unloading, and storage of any equipment, tools, supplies or materials required for performing the Work, whether owned, leased or rented. Neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, will be responsible for any such equipment, supplies or materials which may be lost, stolen or damaged or for any additional rental charges for such. Equipment, tools, supplies and materials left or stored at a Project site, with or without permission, is at Contractor's sole risk. Anything left on the Project site an unreasonable length of time after the Work is completed shall be presumed to have been abandoned by the Contractor. Any transportation furnished by Agency or, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall be solely as an accommodation and neither Agency nor, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, shall have liability therefor. Contractor shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tools, supplies, materials or other property which is utilized by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new and in good condition.
- 10.3 Use of Agency Equipment.** Contractor shall assume the risk and is solely responsible for its use of any equipment owned and property provided by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4, for the performance of Work.

## **Section 11. WARRANTY.**

- 11.1 Nature of Work.** In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Work shall be free from defects in design and workmanship, and that Contractor shall perform all Work in accordance with applicable federal, state, and local laws, rules and regulations including engineering, construction and other codes and standards and prudent electrical utility standards, and in accordance with the terms of this Agreement.
- 11.2 Deficiencies in Work.** In addition to all other rights and remedies which Agency may have, Agency shall have the right to require, and Contractor shall be

obligated at its own expense to perform, all further Work which may be required to correct any deficiencies which result from Contractor's failure to perform any Work in accordance with the standards required by this Agreement. If during the term of this Agreement or the one (1) year period following completion of the Work, any equipment, supplies or other materials or Work used or provided by Contractor under this Agreement fails due to defects in material and/or workmanship or other breach of this Agreement, Contractor shall, upon any reasonable written notice from Agency, replace or repair the same to Agency's satisfaction.

- 11.3 Assignment of Warranties.** Contractor hereby assigns to Agency all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Work.

**Section 12. HEALTH AND SAFETY PROGRAMS.** The Contractor shall establish, maintain, and enforce safe work practices, and implement an accident/incident prevention program intended to ensure safe and healthful operations under their direction. The program shall include all requisite components of such a program under Federal, State and local regulations and shall comply with all site programs established by Agency and, if applicable, the entity for which Contractor is performing the Work, as referenced in Section 1.4.

- 12.1** Contractor is responsible for acquiring job hazard assessments as necessary to safely perform the Work and provide a copy to Agency upon request.
- 12.2** Contractor is responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of the Work and provide copies of the certified training records upon request by Agency. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.
- 12.3** Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4** Agency, or its representatives, may periodically monitor the safety performance of the Contractor performing the Work. Contractors and its subcontractors shall be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from Agency to Contractor under this Agreement at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12.
- 12.5** Contractor shall immediately report any injuries to the Agency site safety representative. Additionally, the Contractor shall investigate and submit to the

Agency site safety representative copies of all written accident reports, and coordinate with Agency if further investigation is requested.

- 12.6 Contractor shall take all reasonable steps and precautions to protect the health of its employees and other site personnel with regard to the Work. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental conditions. Copies of any sampling results will be forwarded to the Agency site safety representative upon request.
- 12.7 Contractor shall develop a plan to properly handle and dispose of any hazardous wastes, if any, Contractor generates in performing the Work.
- 12.8 Contractor shall advise its employees and subcontractors that any employee who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Work.
- 12.9 Contractor shall, at the sole option of the Agency, develop and provide to the Agency a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials shall include diesel fuel used for trucks owned or leased by the Contractor.
- 12.10 If Contractor is providing Work to an Agency Member, SCPPA or SCPPA member (collectively "Member" solely for the purpose of this section) pursuant to Section 1.4 hereof, then that Member shall have the same rights as the Agency under Sections 12.1, 12.2, 12.4, 12.5, and 12.6 hereof.

### **Section 13. MISCELLANEOUS PROVISIONS.**

- 13.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 13.2 **Venue.** In the event that either party brings any action against the other 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.
- 13.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

**13.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

**13.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

**13.6 Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Contractor shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

**13.7 Contract Administrator.** This Agreement shall be administered by Ken Speer, Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative.

**13.8 Notices.** Any written notice to Contractor shall be sent to:

Pullman Heating & Cooling, Inc.  
Jacob Pullman  
P.O. Box 484  
Middletown, CA 95461

Any written notice to Agency shall be sent to:

Randy S. Howard  
General Manager  
Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678

With a copy to:

Jane E. Luckhardt  
General Counsel  
Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678

**13.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page

of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

**13.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.

**13.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Contractor agree to resolve the dispute in accordance with the following:

- 13.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;
- 13.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
- 13.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 13.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 13.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 13.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*

**13.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Contractor's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Contractor's Proposal, the Purchase Order shall control.

**13.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**13.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.

**13.15 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Contractor provide Work to an Agency member, SCLPA or SCLPA member (collectively for the purpose of this section only "Member") pursuant to Section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the Purchase Order and Requested Work relating to such Member.

The Parties have executed this Agreement as of the date signed by the Agency.

NORTHERN CALIFORNIA POWER AGENCY

PULLMAN HEATING & COOLING, INC.

Date \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
**RANDY S. HOWARD, General Manager**

\_\_\_\_\_  
**JACOB PULLMAN, President**

Attest:

\_\_\_\_\_  
Assistant Secretary of the Commission

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel



**EXHIBIT A**  
**SCOPE OF WORK**

Pullman Heating & Cooling, Inc., ("Contractor") shall provide the heating, ventilation and air-conditioning ("HVAC") services, and any miscellaneous maintenance, including, but not limited to the following, as requested by Agency at any facilities owned or operated by Agency, its Members, Southern California Public Power Authority (SCPPA), or SCPPA members:

1. Servicing of heat exchangers, which includes but is not limited to maintaining proper fluid levels, adjusting of fluid flows, and adjusting and replacing of heating strips as needed;
2. Compressor servicing and replacement;
3. Removal of ice on units as needed;
4. Replacing filter and belts; and
5. Servicing Bear Canyon station swamp coolers

All services identified above shall be promptly provided by Contractor to Agency as directed by Agency and in accordance with all Agency specifications.

All services will be billed according to Time & Material (T&M) Rates.

No project under this Agreement shall include Work that would qualify as a Public Works Project under the California Public Contract Code.

## **EXHIBIT B**

### **COMPENSATION SCHEDULE AND HOURLY FEES**

Compensation for all work, including hourly fees and expenses, shall not exceed the amount set forth in Section 2 hereof. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

Pullman Heating & Cooling, Inc., Hourly Rates:

Journeyman Level Worker: \$120 per hour

Apprentice: \$ 95 per hour

Helper: \$ 80 per hour

Prices are subject to change with the giving of 30 days' advance written notice to Agency.

Pricing for services to be performed at NCPA Member or SCPPA locations will be quoted at the time services are requested.

NOTE: As a public agency, NCPA shall not reimburse Contractor for travel, food and related costs in excess of those permitted by the Internal Revenue Service.

**EXHIBIT C**  
**CERTIFICATION**

**Affidavit of Compliance for Contractors**

I,

---

(Name of person signing affidavit)(Title)

do hereby certify that background investigations to ascertain the accuracy of the identity and employment history of all employees of

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(Company name)

for contract work at:

LODI ENERGY CENTER, 12745 N. THORNTON ROAD, LODI, CA 95242

(Project name and location)

have been conducted as required by the California Energy Commission Decision for the above-named project.

---

(Signature of officer or agent)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

THIS AFFIDAVIT OF COMPLIANCE SHALL BE APPENDED TO THE PROJECT SECURITY PLAN AND SHALL BE RETAINED AT ALL TIMES AT THE PROJECT SITE FOR REVIEW BY THE CALIFORNIA ENERGY COMMISSION COMPLIANCE PROJECT MANAGER.

**EXHIBIT D – NOT APPLICABLE**

**CERTIFICATION**

**Affidavit of Compliance for Hazardous Materials Transport Vendors**

I, \_\_\_\_\_,

(Name of person signing affidavit)(Title)

do hereby certify that the below-named company has prepared and implemented security plans in conformity with 49 CFR 172, subpart I and has conducted employee background investigations in conformity with 49 CFR 172.802(a), as the same may be amended from time to time,

\_\_\_\_\_

(Company name)

for hazardous materials delivery to:

LODI ENERGY CENTER, 12745 N. THORNTON ROAD, LODI, CA 95242

(Project name and location)

as required by the California Energy Commission Decision for the above-named project.

\_\_\_\_\_  
(Signature of officer or agent)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

THIS AFFIDAVIT OF COMPLIANCE SHALL BE APPENDED TO THE PROJECT SECURITY PLAN AND SHALL BE RETAINED AT ALL TIMES AT THE PROJECT SITE FOR REVIEW BY THE CALIFORNIA ENERGY COMMISSION COMPLIANCE PROJECT MANAGER.

**EXHIBIT E**

**ATTACHMENT A [from MLA]  
AGREEMENT TO BE BOUND**

**MAINTENANCE LABOR AGREEMENT ATTACHMENT  
LODI ENERGY CENTER PROJECT**

The undersigned hereby certifies and agrees that:

- 1) It is an Employer as that term is defined in Section 1.4 of the Lodi Energy Center Project Maintenance Labor Agreement ("Agreement" solely for the purposes of this Exhibit E) because it has been, or will be, awarded a contract or subcontract to assign, award or subcontract Covered Work on the Project (as defined in Section 1.2 and 2.1 of the Agreement), or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.
- 2) In consideration of the award of such contract or subcontract, and in further consideration of the promises made in the Agreement and all attachments thereto (a copy of which was received and is hereby acknowledged), it accepts and agrees to be bound by the terms and condition of the Agreement, together with any and all amendments and supplements now existing or which are later made thereto.
- 3) If it performs Covered Work, it will be bound by the legally established trust agreements designated in local master collective bargaining agreements, and hereby authorizes the parties to such local trust agreements to appoint trustees and successor trustee to administer the trust funds, and hereby ratifies and accepts the trustees so appointed as if made by the undersigned.
- 4) It has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of the Agreement.
- 5) It will secure a duly executed Agreement to be Bound, in form identical to this documents, from any Employer(s) at any tier or tiers with which it contracts to assign, award, or subcontract Covered Work, or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.

DATED: \_\_\_\_\_ Name of Employer \_\_\_\_\_

\_\_\_\_\_  
(Authorized Officer & Title)

\_\_\_\_\_  
(Address)

**NORTHERN CALIFORNIA POWER AGENCY  
AMENDED AND RESTATED AGREEMENT REGARDING THE USE AND  
NON-DISCLOSURE OF CONFIDENTIAL INFORMATION AND  
LICENSE TO USE INTELLECTUAL PROPERTY**

The Northern California Power Agency (NCPA), a joint powers authority, and \_\_\_\_\_, a \_\_\_\_\_, a member or customer of NCPA ("Receiving Party"), hereby enter into this Amended and Restated Agreement Regarding the Use and Non-Disclosure of Confidential Information and License to Use Intellectual Property ("Agreement").

WHEREAS, pursuant to NCPA project power sale agreements, associated operating agreements, facility agreements, and other applicable services agreements (collectively referred to herein as "NCPA Agreements"), the Receiving Party, as a member or customer and in either case signatory to one or more NCPA Agreements, may be entitled to receive certain Confidential Information (as defined in Paragraph 2) from NCPA concerning the operations and settlements and have a license to use NCPA's Intellectual Property (as defined in Paragraph 7[a]);

WHEREAS, NCPA intends to provide data, including Confidential Information, to the Receiving Party primarily through its Data Portal or other electronic or physical media (the "Delivery Media");

WHEREAS, some of the Confidential Information provided includes data relating to the Receiving Party's operational and settlement activities, including bids and costs;

WHEREAS, the parties recognize that data designated as Confidential Information has the potential to be misused for unlawful market purposes;

WHEREAS, the parties have agreed to put procedures in place to prevent the use or disclosure of the Confidential Information in a manner that might be construed to violate federal or California law;

WHEREAS, NCPA has developed Intellectual Property including software for analyzing energy market data, developing bidding strategies and providing that information to the California Independent System Operator;

WHEREAS, Receiving Party may want to use Intellectual Property developed by NCPA to process data, create bids, create bidding strategies, communicate that information to the California Independent System Operator or other energy market applications; and

WHEREAS, NCPA provides a nonexclusive license to its members and customers to use Intellectual Property while they are members or customers of NCPA and operating under NCPA Agreements but does not sell, give or transfer Intellectual Property to anyone including members and customers.

THEREFORE, in consideration of the mutual covenants in this Agreement, NCPA and the Receiving Party: 1) hereby terminate any Northern California Power Agency Agreement Regarding the Use and Non-disclosure of Information for NCPA Projects Agreement as it is superseded by this Agreement, and 2) agree to contractual limits and protection concerning the

disclosure and use of the Confidential Information and the use, nondisclosure or reproduction of Intellectual Property, as follows:

1. Purpose, Scope and Definition. The purpose of this Agreement is to permit the Receiving Party to review and use the Confidential Information to which it is entitled pursuant to an applicable NCPA Agreement for any lawful purpose, subject to the restrictions on disclosure to Third Parties and uses set forth herein. In addition, this Agreement provides a license to the Receiving Party to use NCPA Intellectual Property only for its own internal use through NCPA Delivery Media as specifically provided by NCPA, subject to restrictions on disclosure, ownership rights, and reproduction but does not grant Receiving Party any rights to use Intellectual Property once Receiving Party is no longer a member or customer of NCPA.

2. Definition of Confidential Information. Confidential Information consists of commercially sensitive information, which may include, but is not limited to Intellectual Property, price, quantity, location or timing of electric industry marketing decisions, provided by NCPA to the Receiving Party, whether through any Delivery Media or otherwise, pertaining to the Receiving Party's operational or settlement activities. Except as otherwise provided in Paragraphs 4 and 5, Confidential Information includes but is not limited to:

- (a) All written materials marked "Confidential" or "Proprietary" or "Sensitive" or other words of similar import provided by NCPA to the Receiving Party;
- (b) All observations of equipment or data, including computer screens, and oral disclosures that are indicated as "Confidential" or "Proprietary" or "Sensitive" or other words of similar import at the time of the observation or the disclosure; and
- (c) Notes, copies printouts or summaries of or regarding the Confidential Information prepared by the Receiving Party or its employees, agents, consultants, attorneys or participants.

3. Non-Disclosure. Subject to Paragraph 4 below, the Receiving Party shall keep the Confidential Information in strict confidence and shall not disclose such information or otherwise make it available, in any form or manner, to any other person or entity (a "Third Party") other than its employees, agents, consultants, attorneys, or participants who are reasonably necessary to assist the Receiving Party with decisions regarding its interest in a NCPA Agreement. Employees, agents, consultants, attorneys and participants shall be classified as follows:

- (a) Designated Reviewers are persons authorized by the Receiving Party Administrator to access the Delivery Media. The Receiving Party shall cause any such Designated Reviewer who is an employee of the Receiving Party to execute Exhibit A to the Receiving Party's Agreement prior to such employee receiving or viewing Confidential Information through the Delivery Media. The Receiving Party shall cause any such Designated Reviewer who is a consultant of the Receiving Party to execute Exhibit B to the Receiving Party's Agreement prior to such consultant receiving or viewing Confidential Information through the Delivery Media.
- (b) Designated Recipients are persons who are not authorized to access the Delivery Media, but who are authorized to view Confidential Information from the Delivery Media as part of their work in assisting the Receiving Party with decisions regarding its interest in the NCPA Agreement. The Receiving Party shall cause any such

Designated Recipient who is an employee of the Receiving Party to review this Agreement and shall take such measures as it deems prudent to ensure that the Designated Recipient understands both the Receiving Party's and his or her responsibilities with regard thereto. The Receiving Party shall cause any such Designated Recipient who is a consultant to execute Exhibit B to this Agreement prior to such consultant receiving or viewing Confidential Information.

- (c) Decision Makers are persons who are members of the governing body, including, but not limited to, city council, governing board, and utility commissions, of the Receiving Party, executives of the Receiving Party or attorneys for the Receiving Party who are not authorized to access the Delivery Media but who may review reports and recommendations summarizing aggregated data that may be based on Confidential Information, in the course of making or approving decisions related to the Receiving Party's decisions about its NCPA Agreement interests. The Receiving Party shall take such measures as it deems prudent to ensure that Decision Makers understand the Receiving Party's and their responsibilities with regard thereto.

- (d) A copy of each executed Exhibit A and/or B shall be provided to NCPA.

It is the ongoing responsibility of the Receiving Party to ensure that: (i) each Exhibit A and Exhibit B is accurate; (ii) each Exhibit A and Exhibit B permits access only to a current Designated Reviewer or Designated Recipient of the Receiving Party; (iii) each Designated Recipient or Designated Reviewer receiving the Confidential Information understands the scope of permissible use; (iv) each new Exhibit A and Exhibit B, and any notice of cancellation of an Exhibit A or Exhibit B, is immediately submitted to NCPA; and (v) NCPA is immediately notified of any unauthorized access to NCPA's Delivery Media or other breach of this Agreement.

4. Use of Confidential Information.

- (a) It is understood and agreed by the Receiving Party that both parties have obligations under federal and California law to safeguard the Confidential Information against use or disclosure for purposes inconsistent with federal or California antitrust laws or for purposes of market manipulation.
- (b) The Receiving Party may use the Confidential Information received hereunder for any lawful purpose, provided that it does not disclose the Confidential Information to Third Parties other than Designated Reviewers, Designated Recipients, or Decision Makers as provided in Paragraph 3, and receives similar commitments as provided in Paragraph 3.
- (c) Receiving Party shall take all prudent measures to ensure that its Designated Reviewers, Designated Recipients and Decision Makers use the Confidential Information in compliance with this Agreement and with all laws and regulations, and safeguard its confidentiality.

5. Exceptions to Non-Disclosure. Notwithstanding Paragraph 2 above, a party to this Agreement shall not have breached any obligation under this Agreement if the Confidential Information is disclosed to a Third Party when the Confidential Information:



- (a) was in the public domain at the time of such disclosure or is subsequently made available to the public consistent with the terms of this Agreement; or
- (b) had been received by the Receiving Party prior to the time of disclosure through other means without restriction on its use, or had been independently developed by the Receiving Party without use of Confidential Information, as demonstrated through documentation; or
- (c) is subsequently disclosed to the Receiving Party by a Third Party without restriction on use imposed by the Third Party and without breach of any law, agreement or legal duty to the Third Party; or
- (d) subject to the provisions of Paragraph 5, is used or disclosed pursuant to statutory duty or an order, subpoena or other lawful process issued by a court or other governmental authority of competent jurisdiction.

6. Notice of Pending Third Party Disclosure.

- (a) In the event that a court or other governmental authority of competent jurisdiction issues an order, subpoena or other lawful process requiring the disclosure of the Confidential Information, the Receiving Party shall notify NCPA immediately upon receipt thereof to allow NCPA to be involved in such proceeding for the purpose of safeguarding the Confidential Information.
- (b) In the event that the Receiving Party is a federal, state, or local governmental entity and/or is subject to public records law or regulation, including but not limited to the federal Freedom of Information Act (FOIA), U.S. Code Title 5, Section 552, as amended, or the California Public Records Act, California Governmental Code Sections 6250, *et seq.*, the Receiving Party shall: (i) notify NCPA immediately upon receipt of a request for public records that include all or part of the Confidential Information; and (ii) subject to sub-paragraph (c), treat the requested Confidential Information as exempt from disclosure.
- (c) The Receiving Party shall not be in violation of this Agreement if it complies with an order of a court or governmental authority, or a public records law or regulation, requiring disclosure of the Confidential Information, after: (i) NCPA has unsuccessfully sought to maintain the confidentiality of such information as provided herein; (ii) NCPA has notified the Receiving Party in writing that it will take no action to maintain such confidentiality; or (iii) counsel for the Receiving Party has determined that disclosure is required under a public records law or regulation, the counsel for the Receiving Party has provided NCPA with three (3) business days written notice of such determination, and NCPA has not responded or sought an order restraining disclosure within such time period.

7. Intellectual Property.

- (a) Definition of Intellectual Property. Intellectual Property includes all NCPA trademarks, trade names, service marks, logos, copyrights, patents, trade secrets, software, processes, computer code and other intellectual property rights now or hereafter owned by NCPA or used by NCPA pursuant to a licensing agreement.

(b) NCPA hereby grants to Receiving Party a nonexclusive, nontransferable and nonsublicensable license for its own internal use to use NCPA's Intellectual Property in conjunction with the services provided by NCPA as part of NCPA Agreements and in accordance with the guidelines provided by NCPA from time to time including but not limited to that Intellectual Property accessed through Delivery Media or other direct or indirect electronic means. Receiving Party agrees that NCPA shall retain ownership of all such Intellectual Property. Any and all use of NCPA's Intellectual Property by Receiving Party shall inure to the benefit of NCPA.

(c) Receiving Party shall not copy, reproduce, distribute, display, modify, or create derivative works based upon all or any portion of the Intellectual Property in any medium, electronic or otherwise, without the express written consent of NCPA. In addition, Receiving Party shall not provide Intellectual Property to Third Parties or services to Third Parties using Intellectual Property.

(d) Upon termination of this Agreement or any of the NCPA Agreements, Receiving Party shall cease using the Intellectual Property and shall not thereafter adopt, use or reverse engineer any colorable imitation of any Intellectual Property.

8. Cyber Security. Receiving Party shall notify NCPA no less than 24-hours after discovery of a potential compromise of Receiving Party's network, computers, applications or electronic systems in any way including confidentiality, integrity or availability of Receiving Party's system with a virus, malware or tracking software that could in theory be transferred to NCPA or allow access by an unauthorized person or entity to NCPA Connect, NCPA data portal, the internet, the cloud or any other technologic connection.

9. Term. This Agreement shall remain in effect unless and until NCPA provides ten (10) days' prior written notice to the Receiving Party of its termination. Termination shall not extinguish any claim, liability or cause of action under this Agreement existing at the time of termination. In addition, Receiving Party acknowledges and agrees that NCPA may suspend and ultimately terminate Receiving Party's access to Confidential Information and/or Intellectual Property in connection with any material breaches or material violation of this Agreement that have not been cured by Receiving Party within thirty (30) days of written notice of such breach or violation.

10. Provisions Surviving Termination. The provisions of Paragraphs 2, 3, 4, 5, 6, 7 and 8 shall survive the termination of this Agreement for a period of five (5) years.

11. Destruction of Documents. Nothing in this Agreement shall prevent the Receiving Party from otherwise lawful destruction of documents or files containing Confidential Information in the ordinary course of business, provided that the method of destruction safeguards the Confidential Information.

12. Notices.

(a) Administrator(s) for Data Portal Access. Receiving Party shall designate one (1) person to act as Administrator on its behalf, and shall provide the name, street address, telephone number, facsimile number and email address of such Administrator to NCPA's Representative designated under sub-paragraph (b) prior to Receiving Party

being granted access to the Data Portal. Either party may change the identity of its Administrator or the address for notice to its Administrator by providing notice to the other.

The Receiving Party's Administrator shall administer access to the Delivery Media on behalf of Receiving Party's employees, agents, consultants, attorneys or participants, including but not limited to making requests for new user accounts, maintenance and administration of existing user accounts, and administration of digital security certificates. NCPA's Administrator shall administer on behalf of NCPA all such requests by Receiving Party's Administrator.

All communications, pursuant to this sub-paragraph, from Receiving Party's Administrator to NCPA's Administrator shall be in writing, via email, to the following address: [dataportaladmin@ncpa.com](mailto:dataportaladmin@ncpa.com).

- (b) Representatives and Addresses. All notices, requests, demands, and other communications required or permitted under this Agreement other than those between Administrators shall be in writing and shall be either: (i) delivered in person; (ii) sent by email; (iii) sent by U.S. certified mail, postage prepaid; or (iv) sent by overnight delivery; addressed as follows:

**Receiving Party:**

Entity Name: \_\_\_\_\_

Name of Contact (person or position): \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

**NCPA:**

Tony Zimmer  
Assistant General Manager; Power Management  
651 Commerce Drive  
Roseville, CA 95678  
Telephone: (916) 781-4229  
Email: [tony.zimmer@ncpa.com](mailto:tony.zimmer@ncpa.com)

and

Jane Luckhardt  
NCPA General Counsel  
651 Commerce Drive  
Roseville, California 95678  
Telephone: (916) 781-4268  
Email: [jane.luckhardt@ncpa.com](mailto:jane.luckhardt@ncpa.com)

- (c) Changed Representatives and Addresses. A party hereto may from time to time change its representative or address for the purpose of notices to that party by notice specifying a new representative or address.
- (d) Effective Date of Notices. All notices and other communications required or permitted under this Agreement that are addressed as provided in this Paragraph 12 shall be effective upon delivery.

13. Complete Agreement; No Other Rights.

- (a) This Agreement contains the complete and exclusive agreement of the parties with respect to the subject matter thereof, and supersedes all discussions, negotiations, representations, warranties, commitments, offers, contracts, and writings prior to the date of this Agreement, with respect to its subject matter. No change to this Agreement shall be effective unless agreed to in writing by the parties hereto. Any conflict between the language of this Agreement and any mark, stamp, annotation or other language identifying something received hereunder as Confidential Information shall be resolved in favor of this Agreement.
- (b) This Agreement is not intended to create any right in or obligation of any party or Third Party other than those expressly stated herein.

14. No Warranties or Representations. Any Confidential Information disclosed by NCPA under this Agreement carries no warranty or representation of any kind, either express or implied. Any Intellectual Property used by Receiving Party contains no warranty or representation of any kind, either express or implied, and no warranty regarding functionality, lack of software bugs or glitches, timely resolution of any problems or shortcomings and no guarantees that any Intellectual Property will be accessible at all times. The Receiving Party shall not be entitled to rely on the accuracy, completeness or quality of the Confidential Information or Intellectual Property, even for the purpose stated in Paragraph 1.

15. Injunctive Relief. The Receiving Party agrees that, in addition to whatever other remedies may be available to NCPA under applicable law, NCPA shall be entitled to obtain injunctive relief with respect to any actual or threatened violation of this Agreement by the Receiving Party, its Designated Recipients or any Third Party to whom Receiving Party disclosed Confidential Information or had access to Intellectual Property. The Receiving Party agrees that it shall bear all costs and expenses, including reasonable attorneys' fees that may be incurred by NCPA in enforcing the provisions of this paragraph, only if NCPA prevails in the litigation.

16. Governing Law. This Agreement is made in the State of California and shall be governed by and interpreted in accordance with its laws.

17. Assignment. This Agreement shall be binding upon the parties, their successors, and assigns. The Receiving Party shall not assign this Agreement without NCPA's prior written consent.

18. Construction of Agreement. Ambiguities or uncertainties in the wording of this Agreement shall not be construed for or against any party, but shall be construed in the manner that most accurately reflects the parties' intent as of the date they executed this Agreement.

19. Signature Authority. Each person signing below warrants that he or she has been duly authorized by the party for whom he or she signs to execute this Agreement on behalf of that party.

20. Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the date set forth above.

NORTHERN CALIFORNIA POWER AGENCY

By: \_\_\_\_\_

Name: Randy Howard

Title: General Manager

Date:

RECEIVING PARTY:

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

Date:

## **EXHIBIT A**

### **INDIVIDUAL AGREEMENT TO BE BOUND BY NCPA'S AMENDED AND RESTATED AGREEMENT REGARDING THE USE AND NON-DISCLOSURE OF CONFIDENTIAL INFORMATION AND LICENSE TO USE INTELLECTUAL PROPERTY**

The undersigned, \_\_\_\_\_ (print or type name), employed as \_\_\_\_\_ (title) by the Receiving Party, \_\_\_\_\_, hereby acknowledges that he or she in his/her official capacity has received a copy of the NORTHERN CALIFORNIA POWER AGENCY AMENDED AND RESTATED AGREEMENT REGARDING THE USE AND NON-DISCLOSURE OF CONFIDENTIAL INFORMATION AND LICENSE TO USE INTELLECTUAL PROPERTY ("Agreement") in which the Receiving Party, \_\_\_\_\_, has an entitlement interest, dated \_\_\_\_\_ between the Northern California Power Agency and the Receiving Party designated therein ("Agreement").

1. The undersigned hereby acknowledges that the undersigned has read the Agreement and understands the importance of maintaining the confidentiality of Confidential Information (as defined in Paragraph 2 of the Agreement), the provisions of the Agreement relating to such confidentiality, and the limitations on the use of Confidential Information.
2. The undersigned hereby acknowledges that the undersigned has read the Agreement and understands the terms of the nonexclusive license to use Intellectual Property (defined in Paragraph 7(a) of the Agreement), and agrees to the limit the use of Intellectual property to uses allowed under NCPA Agreements and this Agreement including but not limited to limitations on term, disclosure and reproduction or reuse.

In consideration thereof, the undersigned agrees to be bound by all of the provisions of the Agreement.

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

Signed: \_\_\_\_\_

By: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

**EXHIBIT B**

**CONSULTANT STATEMENT TO BE BOUND BY NCPA'S AMENDED AND  
RESTATED AGREEMENT REGARDING THE USE AND NON-DISCLOSURE OF  
CONFIDENTIAL INFORMATION AND LICENSE TO USE INTELLECTUAL PROPERTY**

Name of Consulting Entity: \_\_\_\_\_

Type of business and state in which business organization is formed (e.g. a California corporation): \_\_\_\_\_

Located at:  
(address of Consulting Entity): \_\_\_\_\_

Has been engaged to provide technical support and analysis to the following entity:

\_\_\_\_\_

Consulting Entity hereby acknowledges that it has received a copy of the NORTHERN CALIFORNIA POWER AGENCY AMENDED AND RESTATED AGREEMENT REGARDING THE USE AND NON-DISCLOSURE OF CONFIDENTIAL INFORMATION AND LICENSE TO USE INTELLECTUAL PROPERTY ("Agreement") in which the Receiving Party, \_\_\_\_\_, has an entitlement interest, dated \_\_\_\_\_ between the Northern California Power Agency and the Receiving Party designated therein ("Agreement"). Consulting Entity hereby acknowledges and agrees that in order to access Confidential Information (as defined in the Agreement), Consulting Entity must comply with the provisions of the Agreement, and it agrees to do so. Furthermore, Consulting Entity hereby acknowledges and agrees that in order to access Intellectual Property, Consulting Entity must abide by the limitations to the term, disclosure and reproduction or reuse of Intellectual Property, and agrees to restrict the use of Intellectual property to uses allowed under NCPA Agreements and this Agreement.

Consulting Entity acknowledges and agrees that its review of Confidential Information and use of Intellectual Property is solely for the purpose of providing consultancy services to the Receiving Party and that its use of Confidential Information and Intellectual Property shall be limited to the same. To the extent that Consulting Entity provides technical support and analysis to parties who are not party to this Agreement, Consulting Entity agrees that disclosure of Confidential Information or Intellectual Property to such parties is prohibited by the terms and conditions of the Agreement.

The undersigned agrees that he or she is authorized by the Consulting Entity to execute this Consultant Statement to the Agreement.

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

Consulting Entity: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_