



12745 N. Thornton Road  
Lodi, CA 95242

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## LEC PPC Agenda

**Date:** September 6, 2017

**Subject:** September 11, 2017 Lodi Energy Center Project Participant Committee Meeting

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

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

**\*\*\* 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.**

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 Road 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

*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*

*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.*

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 August 14, 2017 Regular Meeting Minutes and August 29, 2017 Special Meeting Minutes

### **MONTHLY REPORTS**

- 3. Operational Report for August 2017** - (Jeremy Lawson)
- 4. Market Data Report for August 2017** – Verbal Report (Mike Whitney)
- 5. Monthly Asset Report for July 2017** – (Michael DeBortoli)
- 6. Bidding Strategies Report** - Verbal Report and update regarding bidding strategies and regulation down revenues – (Ken Goeke)

### **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. Treasurer's Report for August 2017** - Accept by all Participants
- 8. Financial Report for August 2017** - Approve by all Participants
- 9. GHG Reports (excerpted from monthly ARB)** - Accept by all Participants
- 10. Ethos Energy** – Staff is seeking approval of a five year Multi-Task General Services Agreement and Agreement for Purchase of Equipment, Materials and Supplies with Ethos Energy Power Plant Services, LLC in an amount not-to-exceed One Million Five Hundred

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Thousand Dollars (\$1,500,000) for inspections, maintenance and parts refurbishment services and materials and supplies for use at all facilities owned and/or operated by NCPA.

11. **2018 LEC Outage Schedule** – Staff is seeking approval of the 2018 LEC Outage Schedule.
12. **PMOA Schedule 1.00, Exhibit 2** – Staff is seeking approval of revised PMOA Schedule 1.00, Exhibit 2, updating the VOM with FY 2018 Project Annual Budget Line Items.
13. **PMOA Schedule 6.00** – Staff is seeking approval of revised PMOA Schedule 6.00, updating CDWR Primary Representative.

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

### **BUSINESS ACTION ITEMS**

**None**

### **INFORMATIONAL/ DISCUSSION ITEMS**

14. **Update on NCPA Policy on Revenue Allocation** – Staff will provide an update on policy development for allocating revenues to Members resulting from NCPA’s provision of Power Management and Administrative services to third parties. (*James Takehara*)
15. **Additional Operational Updates** – Staff will provide an update on issues related to Operations.

### **ADJOURNMENT**

Next Regular Meeting: October 9, 2017

*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.*

**Lodi Energy Center**  
**Project Participant Committee Regular Meeting**  
**August 14, 2017 - MEETING MINUTES**  
 Location: Lodi Energy Center  
 12745 N. Thornton Rd, Lodi CA 95242  
 and by teleconference  
 10:00 A.M.

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

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

<b>PPC Meeting Attendance Summary</b>		
<b>Participant</b>	<b>Attendance</b>	<b>Particulars / GES</b>
Azusa - Morrow	Present	2.7857%
BART - Lloyd	Absent	6.6000%
Biggs - Sorenson	Absent	0.2679%
CDWR - Brown	Present	33.5000%
Gridley - Borges	Absent	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	Absent	25.7500%
Ukiah - Grandi	Absent	1.7857%
<b>Summary</b>		
Present	4	56.5000%
Absent	9	43.5000%
Quorum by #:	No	
Quorum by GES:	Yes	
Meeting Date:	August 14, 2017	

**Public Forum**

Chairman Morrow 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 of the regular meeting held on July 10, 2017 were considered. The LEC PPC considered the following motion:

**Date:** 8/14/2017

**Motion:** The PPC approves the minutes of the July 10, 2017 regular meeting as presented or *including any edits discussed at today's meeting.*

**Moved by:** Lodi  
**Seconded by:** CDWR

Discussion: 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	Absent	0.2679%
CDWR	Yes	33.5000%
Gridley	Absent	1.9643%
Healdsburg	Absent	1.6428%
Lodi	Yes	9.5000%
Lompoc	Absent	2.0357%
Modesto	Yes	10.7143%
Plumas-Sierra	Absent	0.7857%
PWRPA	Abstain	2.6679%
Silicon Valley Power	Abstain	25.7500%
Ukiah	Absent	1.7857%
<b>Vote Summary</b>		
Total Ayes	4	56.5000%
Total Noes	0	0.0000%
Total Abstain	2	28.4179%
Total Absent	7	15.0821%
Result:	Motion passed	

**MONTHLY REPORTS**

**3. Operational Reports for May 2017**

Mike DeBortoli presented the Operational Report for June. There were no OSHA recordable accidents and no NERC/WECC violations. There were 61 hours of forced outage from July 19<sup>th</sup> – 22<sup>nd</sup> due to water supply curtailment, and 7 hours of forced outage on July 29<sup>th</sup> and 30<sup>th</sup> due to an inlet guide vane (IGV) servo actuator positioning error.

The operational report reflected monthly production of 52,294 MWH, 249 service hours, and equivalent operating availability of 90%. The report set for the Capacity Factor @ 280MW Pmax of 25.1% and 302MW Pmax of 23.3%. There were zero hot starts, twenty-one warm starts, and two cold starts during the month.

#### **4. Market Data Report for May 2017**

Mike Whitney presented the operating and financial settlement results for the month. LEC was committed to CAISO 23 out of 29 available days.

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

Mike DeBortoli presented the monthly asset report for June 2017. Mike reported that June 2017 was 11.02% above budget. Mike reviewed the monthly historical comparisons as well as the 12-month history.

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

Ken Goeke reviewed the monthly Bidding Strategies data for July 2017. Ken reviewed bidding and calculating net start-up costs. The heat wave in June did not carry over into July. However, average temperatures did result in some days with high margins. Ken reported that daily data results are available for review on the LEC PPC extranet site. Ken discussed the plant outages that occurred in July and how they impacted DA and RT pricing.

#### **Consent Calendar (Items 7 – 13)**

The consent calendar was considered. Chairman Morrow 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:** 8/14/2017

**Motion:** The PPC approves the Consent Calendar items consisting of agenda items no. **7.** Treasurer's Report for July 2017; **8.** Financial Reports for July 2017; **9.** GHG Reports excerpted from monthly ARB; **10.** Martech First Amendment to the existing five year Multi-Task General Services Agreement for machining services, increasing NTE amount to \$500,000 and modifying the scope of work to expand for use at any facility owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members; **11.** The Avogadro Group First Amendment to existing five year Multi-Task General Services Agreement for various testing services, modifying entity name and expanding for use at facility owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members; **12.** Summit Crane five year Multi-Task General Services Agreement for crane services NTE \$500,000 for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members; **13.** Kinectrics North America five year Multi-Task Professional Services Agreement for generator testing and assessment services NTE \$1,000,000 for use at all facilities owned and/or operated by NCPA, its Members, SCPPA, and SCPPA Members.

Moved by:  
Seconded by:

MID  
Lodi

Discussion: 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	Absent	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	7	85.1858%
Total Noes	0	0.0000%
Total Abstain	0	0.0000%
Total Absent	6	14.8142%
Result:	Motion passes.	

### **BUSINESS ACTION ITEMS**

None

### **INFORMATIONAL ITEMS**

#### **14. Shared Capacity Reimbursement Methodologies**

Ken Goeke gave some background on the cause of the water outage. As STIG is not subject to high penalties, it was kept on a forced outage during water shortage, so LEC could run using the STIG's reserve water. Staff plan to address this problem by discussing a compensation solution in scenarios where shared capacity is allocated to a single project. Ken plans to develop a Facilities/PMOA Schedule to address these issues. George Morrow thanked STIG project participants for sharing their water, and agreed that it would be fair to have a calculation in places to address these situations. Jiayo Chiang suggested that RA costs be included in the calculation as well, to address scenarios where STIG participants have sold RA capacity and

the STIG is forced into an outage, resulting in RA penalties. Ken Goeke will move forward with development of a schedule.

**15. Update on NCPA Policy on Revenue Allocation**

James Takehara presented a brief update to the Committee on the revenue allocation issue. The policy recommendation remains unchanged, however the timeline has been changed, and the proposal will now be presented at the September Commission meeting.

After bringing this before the Facilities Committee, it was clear that the changes made to this were complex enough to warrant an updated white paper, to give clarity over the long-term.

James plans on returning with a final update in the October LEC PPC meeting.

**16. PG&E Gas Transportation Rate Update**

Ken Speer gave a summary update on the LEC gas transportation issue. NCPA filed a petition with the NCGC for modification to the 2016 rate structure in June. PG&E filed a response two weeks ago, requesting that NCPA's petition be included as a part of the 2019 rate case instead. NCPA is open to rolling this into the 19 Rate Case.

Ken has met with PG&E to negotiate a special rate for LEC. PG&E is currently moving that forward internally for approval of that negotiated rate.

Ken also gave the Committee an update on the 19 Rate Case PG&E filed. The 19 Rate Case is related to the new regulations for gas storage facilities that have come out of the Dogger Regulations. PG&E is proposing a shift to have 20% of storage costs covered by their core customers, with the remaining 70% to be covered by the backbone (NCPA is a backbone customer). NCPA is proposing that these costs be covered by the core customers, as they have benefitted the most from the storage facilities. NCPA will continue to work with Cal Pine, SMUD, and others to formulate a response to PG&E's filing.

**17. Additional Operational Updates**

Mike DeBortoli shared some information with the Committee on Hydrogen Generators. This technology is still too expensive to be feasible at this point.

**Adjournment**

The next regular meeting of the PPC is scheduled for Monday, September 11, 2017.

The meeting was adjourned at 11:30am.

Submitted by: Michelle Schellentrager



**Lodi Energy Center  
Project Participant Committee SPECIAL Meeting  
August 29, 2017 - MEETING MINUTES**

Location: NCPA Headquarters  
651 Commerce Drive, Roseville  
and by teleconference  
10:00 A.M.

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

The PPC special meeting was called to order at 10:01 a.m. by Chairman George Morrow. He asked that roll be called as listed below.

<b>PPC Meeting Attendance Summary</b>		
<b>Participant</b>	<b>Attendance</b>	<b>Particulars / GES</b>
Azusa - Morrow	Present	2.7857%
BART - Lloyd	Absent	6.6000%
Biggs - Sorenson	Present	0.2679%
CDWR - Brown	Present	33.5000%
Gridley - Borges	Absent	1.9643%
Healdsburg - Crowley	Absent	1.6428%
Lodi - Chiang	Present	9.5000%
Lompoc - Singh	Present	2.0357%
MID - Caballero	Present	10.7143%
Plumas-Sierra - Brozo	Absent	0.7857%
PWRPA - Bradley	Present	2.6679%
SVP - Hughes	Present	25.7500%
Ukiah - Grandi	Absent	1.7857%
<b>Summary</b>		
Present	8	87.2215%
Absent	5	12.7785%
Quorum by #:	Yes	
Quorum by GES:	Yes	
Meeting Date:	August 29, 2017	

**Public Forum**

Chairman Morrow asked if any members of the public were present in Roseville or at any of the other noticed meeting locations who would like to address the PPC on any agenda items. No members of the public were present.

**Adjourn to Closed Session**

The PPC adjourned to Closed Session at 10:05 a.m. A Closed Session discussion was had pursuant to paragraph (4) of subdivision (d) of Government Code section 54956.9.

At 10:19 a.m. the Committee returned to Open Session. Attorney Jane Luckhardt advised that no reportable action was taken during the Closed Session.

**Adjournment.**

Chairman Morrow adjourned the special meeting at 10:20 a.m.

Submitted by: Michelle Schellentrager

DRAFT



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

**Agenda Item No.: 3**

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**Date:** 09/11/2017  
**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:**

- August 4<sup>th</sup>, 8<sup>th</sup> – (Noted in Low Dev) Curtailed unit ~20 MWs due to an inlet guide vane (IGV) servo actuator positioning error.
- August 14<sup>th</sup> – (4. 4 Hours) Ip Feed Water pneumatic controller for valve actuator failed.
- August 30<sup>th</sup> - (0 Hours) Auxilary Boiler level control instrument failure.

### **Operation Notable:**

- Water Availibility Update - City of Lodi is building a ground water recharge pond. The pond is 300 acre-ft. As a result of their unreliability this past year, they have modified the design of this pond so that they can draw water back from it and deliver it to LEC as back up storage. A pond of this size is about 48 days storage for LEC at maximum rate of consumption and 100% capacity factor. The project is approved and funded. It goes out to bid this coming winter, with construction starting around March and lasting 6 months.

### **Planned Outage Summaries:**

- 2018 – April 4<sup>th</sup> – 15<sup>th</sup> Steam Turbine , BOP, HRSg Seals, Generator Inspections

**Generating Unit Statistics:****Report  
Date:**

8/1/2017

1. Monthly Production	66,184	MWH
2. Productivity Factor		
a. Service Hours	290	Hours
b. Service Factor	38.9	%
c. Capacity Factor @ 280MW Pmax	31.8	%
d. Capacity Factor @ 302MW Pmax	29.5	%
3. Equivalent Operating Availability (EOA)	99.5	%
4. Forced Outage Rate (FOR)		
a. Total LEC Plant FOR	1.4	%

## 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	6,896	0.39%	142	\$15
Seg. 3 275 - 284	6971	6,962	-0.13%	2,347	-\$84
Seg. 4 250 - 275	7081	6,992	-1.25%	16,315	-\$5,777
Seg. 5 225 - 250	7130	7,050	-1.12%	4,693	-\$1,493
Seg. 6 200 - 225	7200	7,180	-0.27%	2,953	-\$234
Seg. 7 175 - 225	7450	7,460	0.13%	3,800	\$145
Seg. 8 165 - 175	7760	7,779	0.24%	1,948	\$148
	<b>7,164</b>	<b>7,189</b>	<b>-0.40%</b>	<b>32,197</b>	<b>-\$7,279</b>

## 6. AGC Control Deviation

MW Range	High Dev MWH	Low Dev MWH	Total Dev MWH	Cost \$
<b>Bad AGC Data for May</b>				
Seg. 1 296 +	0	0	0	\$0
Seg. 2 284 - 296	0	0	0	\$10
Seg. 3 275 - 284	28	-11	39	\$1,076
Seg. 4 250 - 275	91	-198	289	\$8,094
Seg. 5 225 - 250	38	-20	58	\$1,636
Seg. 6 200 - 225	21	-27	48	\$1,376
Seg. 7 175 - 225	28	-47	74	\$2,218
Seg. 8 165 - 175	12	-4	15	\$481
	<b>218</b>	<b>-306</b>	<b>524</b>	<b>\$14,890</b>

## 7. Starting Reliability

Start Type	Hot Starts	Warm Starts	Cold Starts
Number of Starts	4	16	4
Start Time Benchmark (Minutes)	75	110	200
Start Time Actual (Average Minute)	64	127	364
Start Time Deviation (%)	-14%	16%	82%
Start Fuel Benchmark PMOA (mmBTU)	1,300	1,800	3,500
Start Fuel Actual (Average mmBTU)	1,107	1,625	2,015
Fuel Deviation (%)	-15%	-10%	-42%
Costs of Fuel Deviations (\$)	<b>-\$771</b>	<b>-\$700</b>	<b>-\$5,942</b>

**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 =  $(Actual Fuel Consumed - Expected Fuel) \times Cost of Fuel$

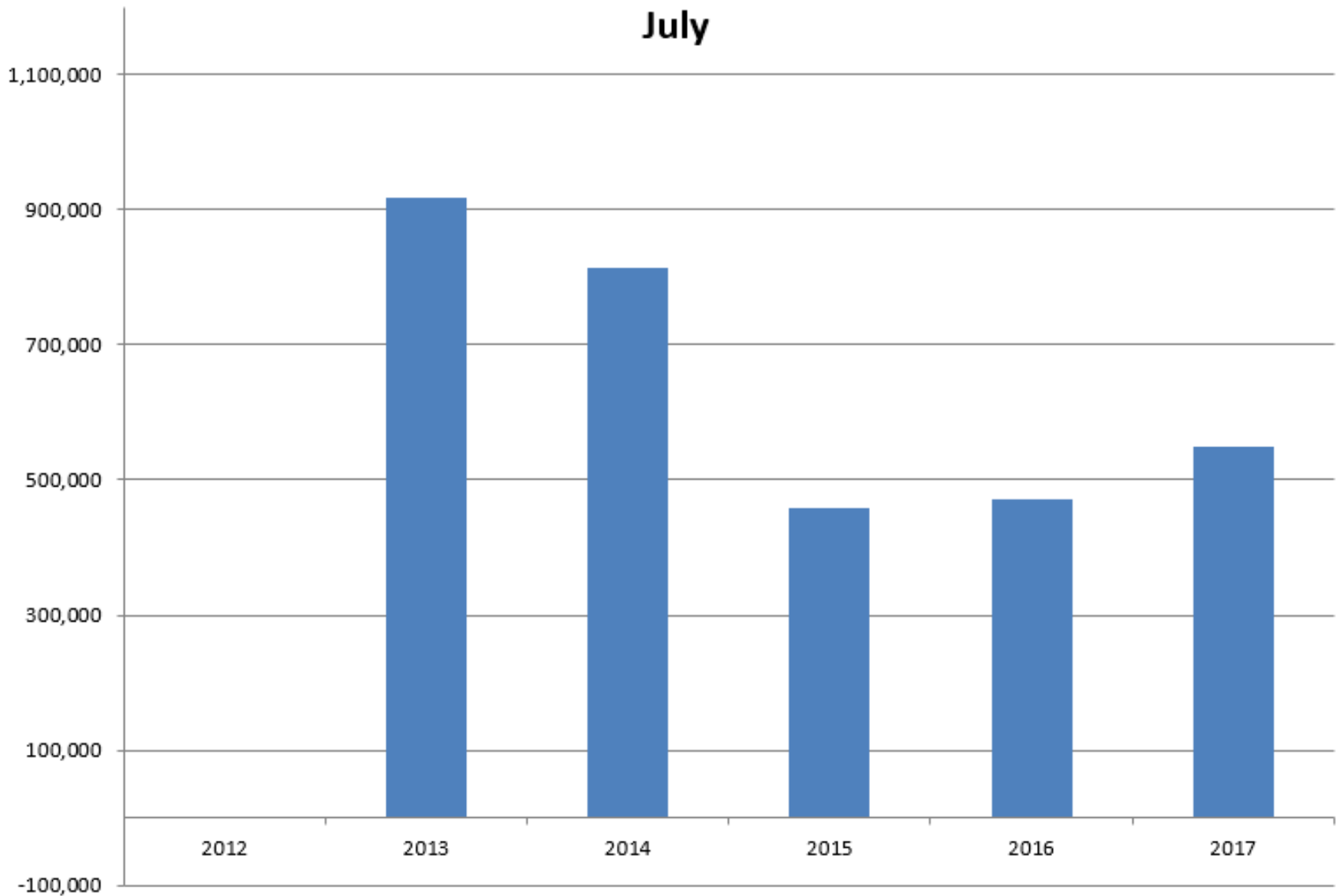


# July Asset Report

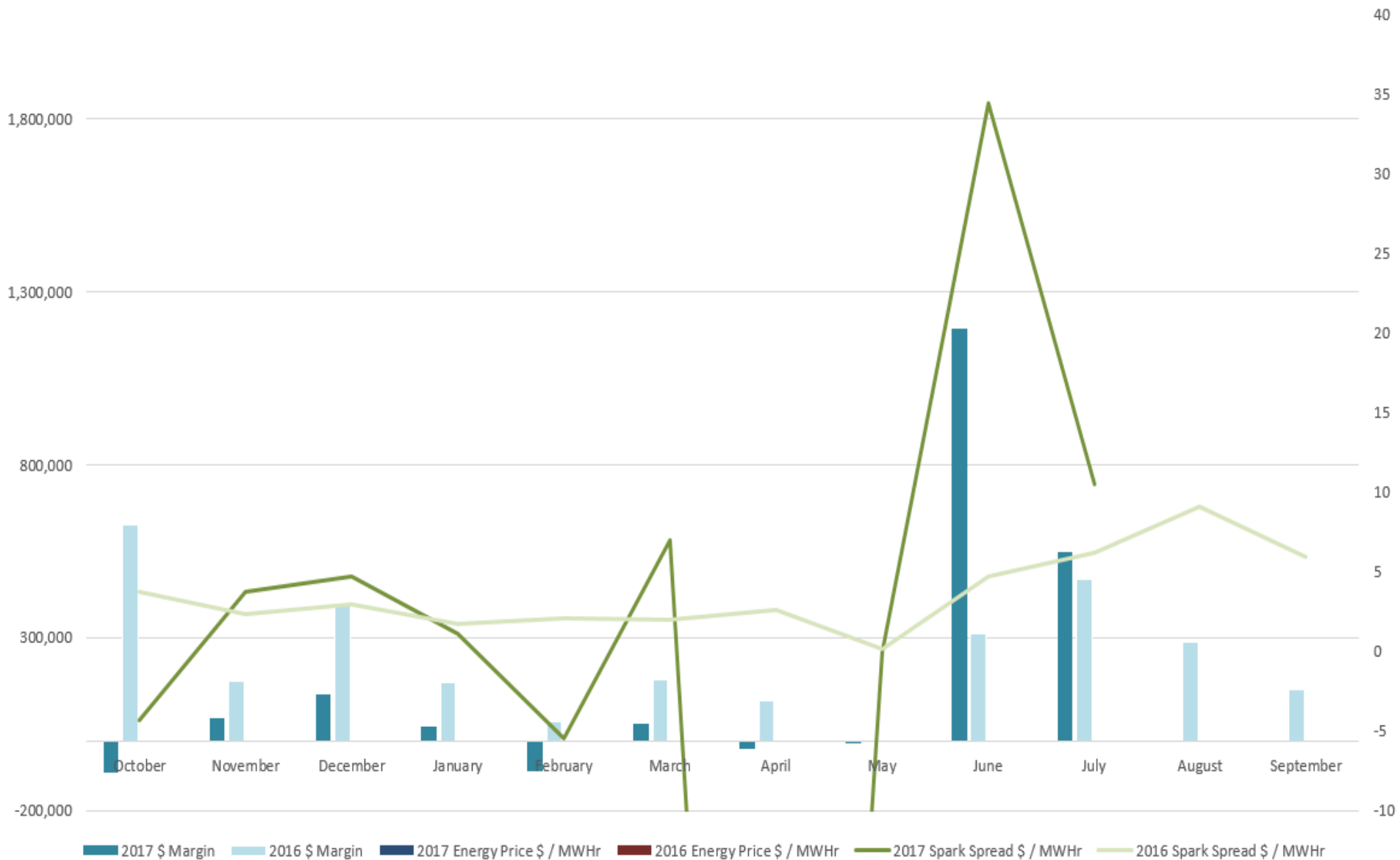
	Most Recent			Above / (below)	Percent Difference	
	Actual	Forecast	Budget	Forecast	Above / (below)	
Revenue	2,783,231	3,333,027	2,779,939	(549,796)	-16%	
VOM	2,131,885	2,677,169	2,420,634	(545,285)	-20%	
Fixed	725,314	759,980	984,342	(34,666)	-5%	
Projects	167,733	219,704	219,704	(51,971)	-24%	
A&G	153,787	186,895	186,895	(33,108)	-18%	
Debt	2,201,387	2,201,387	2,201,387	0	0.00%	
Net Cost	(2,596,875)	(2,712,108)	(3,233,023)	115,234	-4%	
Net Annual Cost		(29,954,729)	(41,127,058)	\$11,172,329		
				Below budget by 27.17%		

# Historical Margins

July

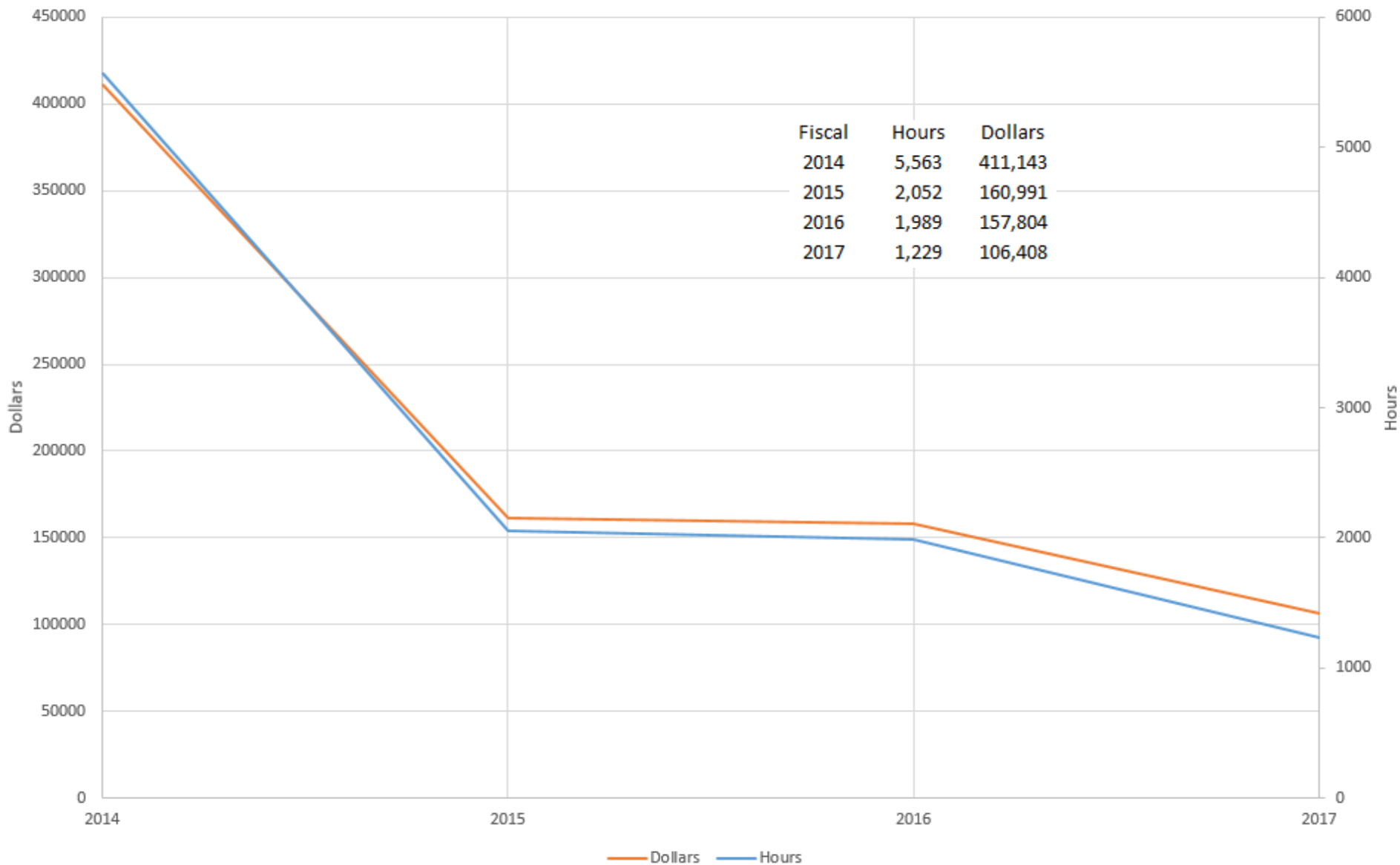


### Historical Monthly Comparison





LEC Overtime



Lodi Energy Center  
Monthly Budget Analysis  
Expenditures  
Report Date: 09/05/2017

	July	August	September	October	November	December	January	February	March	April	May	June	Year	FY2017 Budget	Percent Used	Comments
<b>VOM</b>	2,131,885	2,848,559	2,237,198	2,423,153	1,738,246	2,341,259	2,736,792	1,680,756	1,070,286	1,213,092	1,559,857	1,483,027	23,464,110	18,381,034	127.7%	
Capacity Factor	25%	35%	28%	23%	21%	29%	29%	20%	12%	12%	19%	15%	22%	16%	142.5%	Slightly increased operation compared to budget
Fuel Consumed (mmBTU, estimated)	408,530	498,433	392,313	332,917	294,112	409,212	417,631	273,267	176,114	159,865	264,835	210,795	3,838,023	2,587,320	148.3%	
Avg Fuel Cost (\$/mmBTU)	4.26	4.73	4.67	4.97	4.92	4.78	4.77	5.11	4.95	4.70	4.84	4.88	4.77	5.75	83.0%	Lower fuel price than Budgeted
Power Produced (MWhr, estimated)	54,015	72,764	57,272	48,601	42,936	59,739	60,968	39,893	25,710	23,338	38,662	30,773	554,671	377,711	146.9%	
Avg Power Price (\$/MWhr)	51.53	71.86	77.62	65.75	62.58	59.88	59.71	71.16	73.52	55.12	56.95	69.19	64.73	52.32	123.7%	Higher energy price than Budgeted
Operations / Variable / LTSA	29,334	76,572	77,890	491,347	44,284	44,284	375,579	44,284	44,284	321,475	44,284	247,457	1,841,076	1,263,067	145.8%	
Fuel (estimated)	1,738,553	2,355,777	1,831,712	1,653,809	1,448,368	1,955,268	1,993,820	1,396,077	871,073	750,982	1,282,596	1,028,639	18,306,673	14,877,170	123.1%	
AB32 GHG Offset (estimated)	329,888	386,377	304,114	258,071	227,990	317,214	342,396	224,039	144,387	131,066	217,126	172,821	3,055,491	2,044,488	149.5%	
CA ISO Charges (estimated)	34,109	29,833	23,482	19,926	17,604	24,493	24,997	16,356	10,541	9,569	15,851	34,109	260,870	196,309	132.9%	
<b>Routine O&amp;M (Fixed)</b>	725,314	904,780	781,780	856,779	1,036,812	941,780	1,356,780	871,738	783,780	1,328,812	788,781	806,780	11,183,916	11,210,509	99.8%	
Maintenance / Fixed	170,690	235,000	235,000	285,000	385,000	235,000	235,000	316,592	235,000	535,000	235,000	235,000	3,337,282	3,336,592	100.0%	
Administration	14,307	17,000	17,000	17,000	17,000	17,000	17,000	17,000	17,000	17,000	17,000	17,000	201,307	230,934	87.2%	
Mandatory Costs	36,388	128,000	5,000	5,000	18,000	5,000	10,000	3,000	7,000	60,000	12,000	30,000	319,388	291,959	109.4%	
Inventory Stock	0	0	0	0	0	0	0	0	0	0	0	0	0	-	0.0%	
Labor	380,095	397,968	397,968	397,968	490,000	397,968	397,968	397,968	397,968	590,000	397,968	397,968	5,041,807	5,051,714	99.8%	
Insurance	0	0	0	25,000	0	160,000	570,000	10,367	0	0	0	0	765,367	765,367	100.0%	
Power Management & Settlements	123,260	123,260	123,260	123,259	123,260	123,260	123,260	123,259	123,260	123,260	123,260	123,259	1,479,117	1,479,117	100.0%	
Other Costs	574	3,552	3,552	3,552	3,552	3,552	3,552	3,552	3,552	3,552	3,553	3,553	39,648	54,826	72.3%	
<b>Projects</b>	167,733	219,704	219,705	219,704	219,704	219,705	219,704	219,704	219,705	219,704	219,704	219,705	2,584,481	2,636,452	98.0%	
Maintenance Reserve	167,733	167,733	167,734	167,733	167,733	167,734	167,733	167,733	167,734	167,733	167,733	167,734	2,012,800	2,012,800	100.0%	
Operations & Maintenance Projects	0	5,304	5,305	5,304	5,304	5,305	5,304	5,304	5,305	5,304	5,304	5,305	58,348	63,652	91.7%	
Capital Projects	0	46,667	46,666	46,667	46,667	46,666	46,667	46,667	46,666	46,667	46,667	46,666	513,333	560,000	91.7%	
<b>A&amp;G</b>	153,787	186,895	186,895	186,895	186,895	186,895	186,895	186,896	186,896	186,896	186,896	186,895	2,209,636	2,242,744	98.5%	
Administrative & General (Allocated)	134,528	156,946	156,946	156,946	156,946	156,946	156,946	156,947	156,947	156,947	156,947	156,946	1,860,938	1,883,356	98.8%	
Generation Services Shared	19,259	29,949	29,949	29,949	29,949	29,949	29,949	29,949	29,949	29,949	29,949	29,949	348,698	359,388	97.0%	
<b>Total O&amp;M Cost</b>	3,178,719	4,159,938	3,425,578	3,686,531	3,181,657	3,689,639	4,500,171	2,959,094	2,260,667	2,948,504	2,755,238	2,696,407	39,442,143	34,470,739	114.4%	
<b>Debt Service</b>	2,201,387	2,201,387	2,201,387	2,201,387	2,201,387	2,201,387	2,201,387	2,201,387	2,201,386	2,201,386	2,201,386	2,201,386	26,416,640	26,416,640	100.0%	
<b>Revenues</b>	2,783,231	5,229,105	4,445,399	3,195,372	2,687,028	3,577,245	3,640,198	2,838,971	1,890,209	1,286,390	2,201,858	2,129,047	35,904,054	19,760,321	181.7%	
ISO Energy Sales (estimated)	2,783,231	5,229,105	4,445,399	3,195,372	2,687,028	3,577,245	3,640,198	2,838,971	1,890,209	1,286,390	2,201,858	2,129,047	35,904,054	19,760,321	181.7%	Stronger energy price, higher revenue
Other Income	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
<b>Net</b>	(\$2,596,875)	(\$1,132,219)	(\$1,181,565)	(\$2,692,547)	(\$2,696,016)	(\$2,313,781)	(\$3,061,361)	(\$2,321,511)	(\$2,571,844)	(\$3,863,499)	(\$2,754,766)	(\$2,768,746)	(\$29,954,729)	(\$41,127,058)		Below budget by 27.17%



## Lodi Energy Center Project Participant Committee Staff Report

AGENDA ITEM NO.: 10

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**Date:** September 6, 2017

**Meeting Date:** September 11, 2017

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

**Subject:** Ethos Energy Power Plant Services, LLC – Five Year Multi-Task General Services Agreement and Agreement for Purchase of Equipment, Material and Supplies; **Applicable to the following projects: All NCPA locations and Members, SCPPA and SCPPA Members**

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### Proposal

Approve a five year Multi-Task General Services Agreement and Agreement for Purchase of Equipment, Materials and Supplies with Ethos Energy Power Plant Services, LLC in an amount not-to-exceed One Million Five Hundred Thousand Dollars (\$1,500,000) for inspections, maintenance and parts refurbishment services and materials and supplies for the gas, steam and hydro turbines as needed at the Lodi Energy Center, CT1, CT2, Hydroelectric and Geothermal facility locations.

### Background

The NCPA facilities periodically require various inspections, maintenance and parts refurbishment services and materials and supplies for the gas, steam and hydro turbines. Ethos Energy Power Plant Services is a provider of these services and materials.

### Selection Process

This five year contract does not commit NCPA to any expenditure of funds. When services or materials and supplies are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. In addition to Ethos Energy Power Plant Services, LLC, NCPA currently has entered into an enabling agreement with ProEnergy Services, LLC and Sulzer Turbo Services Houston, Inc. for similar work. In addition, it seeks bids from as many qualified contractors and suppliers as possible. NCPA will issue purchase orders based on the lowest cost and availability of the services and/or materials needed at the time.

### Fiscal Impact

The total cost of the agreement will be not-to-exceed \$1,500,000 over the five year term. Allocation of funds will be based on the Commission approved annual budgets. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

**SR:**

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.

Prepared by:

KEN SPEER  
Assistant General Manager  
Generation Services

Attachments: (1)

- Multi-Task General Services Agreement and Agreement for Equipment, Material and Supplies with Ethos Energy Power Plant Services, LLC

**SR:**



**MULTI-TASK  
GENERAL SERVICES AGREEMENT AND  
AGREEMENT FOR PURCHASE OF  
EQUIPMENT, MATERIALS AND SUPPLIES  
BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
ETHOS ENERGY POWER PLANT SERVICES, LLC**

This agreement for general services and purchase of equipment, materials and supplies ("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 EthosEnergy Power Plant Services, LLC, a limited liability company, with its office located at 12600 Deerfield Parkway, Suite 315, Alpharetta, GA 30004 ("Contractor") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2017 ("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 (both services and goods collectively referred to as "Work" herein). Contractor shall be responsible at its sole expense for delivering the goods ("Goods"), as further specified herein, to Agency's Project Site, DDP, and title shall not pass until the Agency accepts delivery at this Site.

- 1.1 **Term of Agreement.** Unless terminated by either of the Parties, the term of this Agreement shall begin on the Effective Date and shall end five (5) years later.
- 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 [Intentionally left blank.]
- 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 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 ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00)** 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

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.

2.3.1 Contractor agrees to pay any tax or assessment upon its charges covered by this Agreement based on or measured by net income or profit, imposed or levied by any government having jurisdiction over its place of business. Contractor shall also be solely responsible for the payment of all employment taxes incurred in the performance of this Agreement.

2.3.2 All prices are exclusive of any excise, sales, use or withholding taxes; customs or duties; or costs of a similar nature. Such costs, if to be collected by Contractor by applicable law, shall be added to the purchase order, contract price, or invoice to be paid by Agency, subject to Agency's right to verify that the costs are in fact duly paid. In lieu thereof, the Agency may provide Contractor with an exemption or direct-pay certificate acceptable to the taxing authorities.

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 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 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. 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 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 [Intentionally omitted.]

4.4 [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) blanket type policy endorsements to the policies referenced in Section 4.2, adding the Agency as an additional insured but only to the extent of Contractor's defense and indemnity obligations under this Agreement and declaring such insurance primary to Contractor to cover Contractor's defense and indemnity obligations under this Agreement 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 [Intentionally left blank.]

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 **Indemnification.** Contractor shall indemnify, defend (with counsel reasonably acceptable to Agency) and hold harmless the Agency, and its officials, commissioners, officers, employees, agents and volunteers from claims, demands, and causes of action asserted by any person (including, without limitation, Agency employees, officers, commissioners, managers, employees, agents, and representatives) for personal injury or death, or for loss of or damage to property that results from Contractor's negligence or willful misconduct hereunder. Where personal injury, death, or loss of or damage to property is the result of the joint negligence or misconduct of Contractor and Agency, Contractor's duty of indemnification shall be in proportion to its allocable share of such joint negligence or misconduct. This indemnification obligation shall terminate one year after the end of any warranty period specified in this Agreement, plus any extension thereof. Contractor will reimburse Agency for all liabilities, costs, attorney's fees, expenses and losses incurred by Agency in consequence of any claims, demands, and causes of action which may be brought against Agency arising out of the performance or non-performance by Contractor of this Agreement. Notwithstanding anything to the contrary contained herein, Contractor's obligation with respect to indemnification for Agency's property shall not exceed One Million Dollars (\$1,000,000). However, nothing in this section or this Agreement generally shall be construed to require Contractor to indemnify Agency for the sole negligence, willful misconduct, or for defects in design furnished by, the Agency or its employees, officers, commissioners, managers, employees, agents and representatives. The indemnification provided under this Section 5.1 shall be in addition to any other indemnification provisions contained in this Agreement.
- 5.2 **Limitations on Liability.** Contractor's liability with respect to claims of any kind (excluding death or personal injury), whether as a result of breach of contract, breach of warranty, tort (including negligence) strict liability or otherwise, for all loss or damage arising out of or in connection with goods sold or services furnished under this Agreement, or any amendment thereto, including remedial warranty work, shall in no case exceed the total compensation set forth in a Purchase Order and paid to Contractor or the amount of applicable insurance limited to the amounts set forth in Section 4, whichever is greater. All such liability shall terminate twenty-four (24) months after completion of the Work on each Purchase Order. In no event shall Contractor or its suppliers, or Agency, be liable, whether as a result of breach of contract or warranty, tort (including negligence), strict liability or otherwise, for special, indirect, incidental, exemplary or consequential damages whatsoever; loss of profits or revenue; or loss of use of equipment or associated equipment, facilities or services; downtime costs (including but not limited to capital cost, fuel cost, and the cost of purchased or replacement power); loss of data; or (solely as to Contractor or its suppliers) claims of members of Agency for such damages and Agency will indemnify Contractor, its employees and suppliers against any such claims for damages by Agency members.

5.3 **Transfer of Title.** Contractor shall be deemed to be in exclusive possession and control of the Goods and shall be responsible for any damages or injury caused thereby, including without limitation any spills, leaks, discharges or releases of any Goods, until delivery. For purposes of this Agreement, delivery occurs when Contractor or its agents complete transfer of the Goods into appropriate containers, machinery, storage tanks, or other apparatus identified by Agency. In the event a spill, leak, discharge or release of Hazardous Materials brought to site or negligently caused by Contractor requires notification to a federal, state or local regulatory agency, Contractor shall be responsible for all such notifications.

"Hazardous Materials" means any toxic or hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, radioactive material, petroleum or petroleum-derived products or by-products, or any other chemical, substance, material or emission, that is regulated, listed, or controlled pursuant to any national, state, or local law, statute, ordinance, directive, regulation, or other legal requirement of the United States.

## **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, which shall not be unreasonably withheld or delayed. 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. In the

event of a material change in applicable laws after the date of a Purchase Order, Contractor may request an equitable change to such Purchase Order, subject to the mutual written agreement of the Parties.

- 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.
- 7.4 **Prevailing Wage Rates.** If applicable, 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 for Convenience.** Agency may, for its convenience, cancel and terminate this Agreement in whole, or from time to time in part, at any time by written notice thereof to Contractor. Upon any such cancellation and termination Contractor agrees to waive any claims for damages, including loss or anticipated profits, on account thereof. But as the sole right and remedy of Contractor, Agency shall pay Contractor in accordance with Subparagraph B below; provided, however, that the provisions of this Agreement, which by their very nature survive acceptance of the work under this Agreement, shall remain in full force and effect after such cancellation and termination to the extent provided in such provisions.

A. Upon receipt of any such notice, Contractor shall, unless the notice directs otherwise;

1. Immediately discontinue the work on the date and to the extent specified in the notice;
2. Place no further orders or subcontract for materials, services, or facilities, other than as may be necessary for completion of such portion of the work under this Agreement as is not terminated.
3. Promptly make every reasonable effort to procure cancellation upon terms satisfactory to Agency of all orders and subcontracts to the extent they relate to the performance of work terminated; and
4. Assist Agency as specifically requested, in writing, with the maintenance, protection and disposition of property acquired by Agency under this Agreement.

B. Upon any such termination, Agency will pay an amount to Contractor determined in accordance with the following (without duplication of any item):

1. All amounts due and not previously paid to Contractor for work satisfactorily completed or in progress in accordance with this Agreement prior to such notice;
2. The contract price for work thereafter satisfactorily completed as specified in such notice;

3. The cost of settling and paying fair and reasonable claims arising out of the termination of work under subcontracts or orders as provided in Subparagraph A.(3) above; provided, however that this cost shall not exceed the amount specified in the applicable Purchase Order;
  4. The reasonable costs incurred pursuant to Subparagraph A.(4) above.
- C. If Contractor is not satisfied with the payment made hereunder, it may file a claim with Agency for a decision pursuant to this Agreement. Acceptance by Contractor of such payment shall have the same effect as acceptance of the final payment made pursuant to this Agreement.
- 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 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, and, after written notice of breach from Agency, fails to cure such breach within a reasonable time period not to exceed ten (10) days (or such other period as agreed upon by the Parties), 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.
- 8.5 **Options upon Breach by Agency.** If Agency materially breaches any of the terms of this Agreement and, after written notice of breach from Contractor, fails to cure such breach within a reasonable time period not to exceed ten (10) days (or such other period as agreed upon by the Parties), Contractor's remedies shall include, but not be limited to, the following:
- 8.5.1 Immediately suspend its performance;
  - 8.5.2 Immediately terminate this Agreement.

**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 from Agency pursuant to this Agreement and that are intended as a deliverable 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 on a time and material basis for a period 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 reasonably required to verify such time and material charges 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 this 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 Project Site Locations.** The Project site at which Contractor may perform Work under this Agreement shall include any facilities owned and/or operated by the Agency.

**10.2 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; and other contractors at the Project site and to participate in the protection of 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. Contractor shall place any such waste, materials, or rubbish in receptacles provided by Agency; provided, however, that Contractor shall provide Agency with safety data sheets applicable to any Hazardous Materials before placement in Agency receptacles.

- 10.3 **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. Agency will not 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 Contractor. Any transportation furnished by Agency shall be solely as an accommodation and Agency shall not 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 provided by Contractor on the Project site. All materials and supplies used by Contractor in the Work shall be new, unless otherwise agreed in writing by the Parties, and in good condition.
- 10.4 **Use of Agency Equipment.** Contractor shall assume the risk of damage to and is solely responsible for its use of any equipment owned and property provided by Agency for the performance of Work.

## **Section 11. WARRANTY.**

- 11.1 The Work will be performed in accordance with this Agreement and will fulfill the requirements of this warranty, and any other warranty therefor, included in this Agreement. Contractor shall and does hereby warrant that the Work provided hereunder will conform to this Agreement. Contractor shall and does hereby further warrant that the Work will be free of defects in workmanship and materials.
- 11.2 If during the Warranty Period (as defined below), any of the Work is found to be defective or not in accordance with this Agreement, Agency shall so notify Contractor in writing.

11.2.1 For Work on combustion turbines, "Warranty Period" shall mean:

For parts supply or repair: (a) 12,000 Factored Fired Hours, (b) 600 Factored Fired Starts, (c) 24 months from date of original installation or repair, or (d) 30 months from date of shipment, whichever occurs first.

For field service: (a) 12,000 Factored Fired Hours, (b) 600 Factored Fired Starts, or (c) 24 months from date of original service, whichever occurs first.

For purposes of this Section 11.2.1:

"Factored Fired Hours" shall mean the weighted number of hours that each unit is operated consisting of the actual number of fired hours of operation adjusted on account of conditions applicable during those hours of operation in accordance with applicable OEM (original equipment manufacturer) reference documents.

"Factored Fired Starts" shall mean the weighted number of starts that each unit experienced during operation consisting of the actual number of starts or trips adjusted on account of conditions applicable during those starts or trips in accordance with applicable OEM (original equipment manufacturer) reference documents.

11.2.2 For all other Work, "Warranty Period" shall mean:

For parts supply or repair: (a) 24 months from date of original installation or repair, or (b) 30 months from date of shipment, whichever occurs first.

For field services: 24 months from date of original service.

- 11.3 Promptly upon receipt of such notification, Contractor shall, without cost to Agency, proceed with such replacement or corrections of the Work as are necessary in order to make it comply with this Agreement. Contractor shall also bear the cost of making good work of separate contractors destroyed or damaged in such replacement or correction.
- 11.4 In the event of a defect, Agency shall provide clear access to the defective work at the site. For purposes of this section, "access" shall mean an opportunity or ability to enter, approach, or pass to and from defective work. "Access" shall not include any uncovering, disassembly or reassembly of parts or hardware required for Contractor to perform Contractor's warranty obligations to the extent that such uncovering, disassembly or reassembly of parts or hardware was within Contractor's original scope of work. If any uncovering, disassembly or reassembly of parts or hardware is necessary for Contractor to perform its warranty obligations, Contractor shall reimburse Agency for any costs or expenses related to such uncovering, disassembly or reassembly of parts or hardware if such uncovering, disassembly or reassembly of parts or hardware was within Contractor's original scope of work.
- 11.5 **THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, AND IN PARTICULAR CONSEQUENTIAL DAMAGES ARE EXPRESSLY EXCLUDED.**

**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.

- 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 Contractor 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 (1) at any time when, or for any Work performed when, Contractor is not in full compliance with this Section 12, until such noncompliance is corrected, or (2) for any Work performed after Agency has provided notice to Contractor that Contractor is not in full compliance with this Section 12 but before Contractor has corrected the noncompliance.
- 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.
- 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. Such monitoring and/or sampling shall be at additional cost to Agency, unless the hazardous or toxic substances or environmental conditions were caused by Contractor, in which case Contractor shall bear such costs. Copies of any sampling results will be forwarded to the Agency site safety representative upon request. Prior to work being performed at the Project site, Agency shall identify any known hazardous materials.
- 12.6 Contractor shall develop a plan to properly handle any hazardous wastes Contractor generates in performing the Work, and shall dispose of such hazardous wastes in accordance with Section 13.16 of this Agreement.
- 12.7 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.

12.8 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 to include diesel fuel used for trucks owned or leased by the Contractor.

12.9 [Intentionally left blank.]

### **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. Notwithstanding, both Parties waive their right to trial by jury.

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:

Frank G. Avery, President

EthosEnergy Power Plant Services, LLC  
12600 Deerfield Parkway, Suite 315  
Alpharetta, Georgia 30004  
(678) 242-0226

With a copy to:

Abby Yates, General Counsel  
Abby.yates@ethosenergygroup.com

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:

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, and Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and the Contractor's Proposal, the Exhibits 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.

**13.16 Asbestos and Hazardous Materials.** Agency represents that all areas of the Agency's facility where any Work is to be performed, or where Contractor or its supplier's personnel are to be present, are free of materials containing or presumed to contain asbestos. In no case will Contractor or its supplier's personnel be required to work in such areas unless and until asbestos and/or presumed asbestos-containing material is removed by Agency at its sole expense, and Contractor is granted an Amended Purchase Order equitably adjusting its payment and schedule for the impact arising out of or resulting from the foregoing (including demobilization and remobilization or personnel). Contractor shall likewise be entitled to an Amended Purchase Order to the extent resulting from the presence of any hazardous waste, toxic or similar materials regulated under applicable law ("Hazardous Materials") that may be present at Agency's facility where any Work is to be performed. Hazardous Materials handled or utilized by Contractor at Agency's facility, if any, will be deposited by Contractor in Agency-supplied containers at such facility. Agency shall have responsibility for storing, transporting, and disposing of such materials in accordance with applicable law. Agency shall indemnify, save harmless and defend Contractor against all damages arising out of or relating to Hazardous Materials which are (i) present in or about Agency's equipment or the site prior to the commencement of Contractor's work; or (ii) improperly handled or disposed of by Agency or Agency's employees, agents, contractors or subcontractors.

**13.17 Force Majeure.**

**13.17.1** If a Force Majeure Event prevents either Party from performing any obligation under this Agreement, that inability to perform will not constitute breach, and the schedule for performance will be extended, if the Party asserting the Force Majeure Event ("Asserting Party") uses reasonable efforts to perform its obligations, and (2) complies with its obligations under Section 13.17.3..

**13.17.2** Under the terms of this Agreement, "Force Majeure Event" means an event which is not within the reasonable control of the Asserting Party and is not a result of the Asserting Party's failure to act or its negligence. To the extent such event satisfies the foregoing criteria, Force Majeure Event may include without limitation: acts of God, strikes, lockouts, other industrial disturbances, acts of the public enemy, laws and regulations, wars or war-like action (whether actual, impending or expected and whether de jure or de facto), arrests or other restraints of governments (civil or military), blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, civil disturbances, explosions, breakage or accident to equipment or machinery, confiscation or seizure by any government or public authority, nuclear reaction or radiation, radioactive contamination, or any other material causes, whether of the kind herein enumerated or otherwise. Notwithstanding the foregoing, and for the avoidance of doubt, the following shall not be considered Force Majeure Events: economic hardship; lack of money or credit; failure to pay amounts when due; loss of profit or loss of return on

investment; loss of use; changes in commodity prices and/or the price of materials, fuel, or supplies; changes in labor costs, wages, and benefits; changes in exchange rates; or inability to perform and complete the Work for the applicable price under Exhibit B.

**13.17.3** Except as specifically provided otherwise in this Agreement, if a Force Majeure Event occurs, the Asserting Party shall promptly, after it becomes aware of the occurrence of the event, and in any event no more than five (5) days after the Asserting Party becomes aware of such occurrence, notify the other Party of the occurrence of that Force Majeure Event, its effect on performance, and how long the Asserting Party expects it to last. Thereafter the Asserting Party shall update that information as reasonably necessary. During a Force Majeure Event, the Asserting Party shall use reasonable efforts to resume its performance under this Agreement.

**13.17.4** If the Force Majeure Event continues for more than three (3) months, either Party may give written notice to the other to terminate the Agreement. The notice to terminate must specify the termination date, which must be not less than seven (7) days after the date on which the notice is given.

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

NORTHERN CALIFORNIA POWER AGENCY

ETHOS ENERGY POWER PLANT SERVICES,  
LLC

Date \_\_\_\_\_

Date \_\_\_\_\_

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

\_\_\_\_\_  
CHRIS WILKINSON, Vice President of  
Major Maintenance (Americas)

Attest:

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

Approved as to Form:

\_\_\_\_\_  
General Counsel



## EXHIBIT A

### SCOPE OF WORK

Ethos Energy Power Plant Services, LLC ("Contractor") shall provide the following services for the Northern California Power Agency ("Agency") at its facilities:

- Inspections
- Maintenance
- Parts Refurbishment

Contractor may also supply goods at a mutually agreed price.

## 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, Compensation, above. The hourly rates and/or compensation break down and an estimated amount of expenses is as follows:

A. NCPA Area 1 Geysers and Alameda – Jan. 1, 2017 thru Dec. 31, 2017

Hourly Rates	Straight Time	Overtime	Double Time
Shift	Days/Nights	Days/Nights	Days/Nights
Project Manager	\$124.00	\$163.00	\$203.00
General Foreman	\$121.00	\$159.00	\$196.00
Working Foreman	\$118.00	\$155.00	\$192.00
Journeyman Millwright	\$114.00	\$148.00	\$182.00
8 <sup>th</sup> Period Apprentice	\$110.00	\$143.00	\$175.00
7 <sup>th</sup> Period Apprentice	\$107.00	\$137.00	\$168.00
6 <sup>th</sup> Period Apprentice	\$103.00	\$132.00	\$161.00
5 <sup>th</sup> Period Apprentice	\$99.00	\$127.00	\$154.00
4 <sup>th</sup> Period Apprentice	\$83.00	\$108.00	\$134.00
3 <sup>rd</sup> Period Apprentice	\$79.00	\$103.00	\$127.00
2 <sup>nd</sup> Period Apprentice	\$70.00	\$93.00	\$115.00
1 <sup>st</sup> Period Apprentice	\$63.00	\$84.00	\$104.00
Shop Field Support	\$114.00	\$148.00	\$182.00
Machine/Fabrication Shop	\$118.00	\$155.00	\$192.00

B. NCPA Area 3 NF Stanislaus, Upper Utica Project, Lodi Plants – Jan. 1, 2017 thru Dec. 31, 2017

Hourly Rates	Straight Time	Overtime	Double Time
Shift	Days/Nights	Days/Nights	Days/Nights
Project Manager	\$124.00	\$163.00	\$203.00
General Foreman	\$121.00	\$159.00	\$196.00
Working Foreman	\$118.00	\$155.00	\$192.00
Journeyman Millwright	\$108.00	\$140.00	\$171.00
8 <sup>th</sup> Period Apprentice	\$105.00	\$135.00	\$165.00
7 <sup>th</sup> Period Apprentice	\$102.00	\$130.00	\$158.00
6 <sup>th</sup> Period Apprentice	\$98.00	\$125.00	\$152.00
5 <sup>th</sup> Period Apprentice	\$95.00	\$120.00	\$146.00
4 <sup>th</sup> Period Apprentice	\$79.00	\$102.00	\$126.00
3 <sup>rd</sup> Period Apprentice	\$75.00	\$97.00	\$120.00
2 <sup>nd</sup> Period Apprentice	\$67.00	\$87.00	\$108.00
1 <sup>st</sup> Period Apprentice	\$60.00	\$79.00	\$98.00
Shop Field Support	\$108.00	\$140.00	\$171.00
Machine/Fabrication Shop	\$118.00	\$155.00	\$192.00

## NOTES:

- These rates include wages, benefits, payroll taxes, workers' compensation, overhead, all tools except special tools and equipment, product liability, general automotive liability and all other required insurances, permits and taxes. This does not include state sales or use taxes.
- Apprentices may be used on any crew consisting of at least three workers subject to their qualifications and availability.
- All service trucks will be billed at sixteen dollars (\$16.00) per hour to cover the cost of the truck, maintenance and fuel.
- Consumables, such as gloves, cleaning solvents, penetrating oil, PPE (hard hats, safety glasses, ear plugs), rags, tape, parts buckets, etc. Will be billed at twenty dollars (\$20.00) per day per worker on the time sheet.
- Overtime shall be charged for all work over eight (8) hours a day and for all work performed on Saturdays.
- Double time shall be charged for all work performed on Sundays or the following holidays: New Years Day, Martin Luther King's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving Day, and Christmas Day.
- Travel time for transferred employees will be charged on a straight time basis for actual hours traveled if applicable. Subsistence for non-local labor will be charged at the rate of \$125.00 (includes hotel cost) per day, per worker. Subsistence will be paid to employees living 75 miles or more from the job site.
- There shall be a minimum four-hour charge per worker at the applicable rate for show-up time whether work is performed or not. There shall be a minimum eight-hour charge per worker at the applicable rate if he or she works more than four hours.
- All additional materials, rentals, freight, 3rd-party subcontracts, transportation, and travel expenses shall have a fifteen percent (15%) handling charge.
- Area 1: Counties of: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano and Sonoma.
- Area 2 and Area 3: Counties of: Monterey, San Benito, Santa Cruz, Sacramento, Yolo, San Joaquin, Western Placer\* And Western El Dorado." (Western Placer County includes territory west of and including Highway 49; Western El Dorado County includes territory west of and including Highway 49 and territory inside the city limits of Placerville.)
- After Dec. 31, 2017, prices listed above are subject to one annual change based on market rate, with a minimum of thirty (30) days' prior written notice to the Agency.
- Contractor shall provide pricing for any services or goods not specified above upon the issuance of individual Purchase Orders. The Parties shall mutually confirm the pricing for any such services or goods in writing prior to commencement of the Work.
- 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

ETHOS ENERGY POWER PLANT SERVICES, LLC

(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,

ETHOS ENERGY POWER PLANT SERVICES, LLC

(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 establishes 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  
 CALENDAR YEAR 2018  
 PLANNED MAINTENANCE OUTAGE SCHEDULE

Facility	Jan.	Feb.	Mar.	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Collierville Unit 1										6-7 and 8-19		
Collierville Unit 2										6-7 and 10/22-	10/22-11/21	
Spicer Unit 1									10-13			
Spicer Unit 2									17-20			
Spicer Unit 3									24-27			
CT1 Alameda Project			12-23									
CT1 Lodi Project					7-18							
CT2 STIG Project				15-22								
Lodi Energy Center				2-22								
Geothermal Plant 1 Unit 1				2-6								
Geothermal Plant 1 Unit 2				2-6								
Geothermal Plant 2 Unit 4				16-20								

Proposed 7-5-2017



## Lodi Energy Center Project Participant Committee Staff Report

AGENDA ITEM NO.: 12

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**Date:** September 6, 2017

**Meeting Date:** September 11, 2017

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

**Subject:** Approval of Updated Lodi Energy Center (LEC) Project Management and Operations Agreement Schedule 1.00, Exhibit 2 - VOM

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### Proposal

Approval of revised Project Management and Operations Agreement (“PMOA”) Schedule 1.00, Exhibit 2 to reflect changes made to VOM for FY18 budget.

### Background

NCPA and the LEC Project Participants executed the LEC PMOA, which became effective on August 1, 2010. The PMOA contains multiple Schedules, which provide procedures and protocols, and guidelines regarding Project operations. Pursuant to the PMOA, Schedules may be revised, deleted or added from time to time based on then existing operating or market conditions, and subject to the approval of the Project Participant Committee (PPC), and with regard to certain Schedules, approval additionally by the NCPA Commission when such Schedules “...could be reasonably viewed as having an impact on other NCPA projects.” (PMOA, Article 10).

Staff is recommending changes to PMOA Schedule 1.00, Exhibit 2, “VOM” which outlines the Variable Operation and Maintenance costs, based on adopted FY18 budget. Schedule 1.00, Exhibit 2 does not require approval by the NCPA Commission.

### Fiscal Impact

No significant costs will be incurred to implement the change to the PMOA Schedule 1.00, Exhibit 2.

### 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.

### Recommendation

NCPA staff recommends that the PPC approve the revised PMOA Schedule 1.00, Exhibit 2, dated 9-11-2017 for reference.

Prepared by:

/s/

KEN SPEER  
Assistant General Manager Generation Services



PMOA Schedule 1.00, Exhibit 2 Revision

September 6, 2017

Page Two

Attachments: (1): PMOA Schedule 1.00, Exhibit 2 - VOM dated 9-11-2017

## EXHIBIT 2

### VOM

The Variable Operation and Maintenance cost (VOM) shall be determined using the applicable budgeted variable cost line items, as listed in the table below, and the annual forecasted Project Energy in the then current Project Annual Budget or Mandatory Budget Amendment. The VOM shall be reviewed and revised annually in coordination with NCPA's Project Annual Budget cycle, or as otherwise determined by the PPC and NCPA.

**VOM (\$/MWH) = (Operation (\$) + Siemens LTSA (\$) + Maintenance Reserve (\$)) / forecasted annual Project Energy (MWH)**

#### FY 20178 Project Annual Budget Line Items

Variable Cost	\$	\$/MWH
Routine O&M Costs Operation (Appendix I)	\$1,634,847,435,878	0.961,15
Routine O&M Costs Maintenance Siemens LTSA	\$3,510,222,827,187	2.12,19
Other Costs Maintenance Reserve (Appendix I)	\$347,710,79,319	0.21
<b>Total FY2017</b>	<b>\$5,320,128,1,342,384</b>	<b>3.2955</b>

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Forecast annual Project Energy (MWh)	<u>1,655,765,377,711</u>
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$$\text{VOM} = \$1,634,847,435,878 + \$3,510,222,827,187 + \$347,710,79,319) / 1,655,765,377,711$$

$$\text{VOM} = 3.2955 \text{ \$/MWh}$$



## Lodi Energy Center Project Participant Committee Staff Report

AGENDA ITEM NO.: 13

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**Date:** September 6, 2017  
**Meeting Date:** September 11, 2017  
**To:** Lodi Energy Center Project Participant Committee  
**Subject:** Approval of Updated Lodi Energy Center (LEC) Project Management and Operations Agreement Schedule 6.00 – Contact List

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### Proposal

Approval of revised Project Management and Operations Agreement (“PMOA”) Schedule 6.00 to reflect change made for the Department of Water Resources.

### Background

NCPA and the LEC Project Participants executed the LEC PMOA, which became effective on August 1, 2010. The PMOA contains multiple Schedules, which provide procedures and protocols, and guidelines regarding Project operations. Pursuant to the PMOA, Schedules may be revised, deleted or added from time to time based on then existing operating or market conditions, and subject to the approval of the Project Participant Committee (PPC), and with regard to certain Schedules, approval additionally by the NCPA Commission when such Schedules “...could be reasonably viewed as having an impact on other NCPA projects.” (PMOA, Article 10).

Staff is recommending changes to PMOA Schedule 6.00, “Contact List” which provides the contact information for each of the Project Participants. Schedule 6.00 does not require approval by the NCPA Commission.

### Fiscal Impact

No significant costs will be incurred to implement the change to the PMOA Schedule 6.00.

### 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.

### Recommendation

NCPA staff recommends that the PPC approve the revised PMOA Schedule 6.00, dated 9-11-2017 for reference.

Prepared by:

/s/

KEN SPEER

Assistant General Manager Generation Services

Attachments: (1): PMOA Schedule 6.00 Contact List dated 9-11-2017

# Agreement Schedule 6.00

## Contact List

### Northern California Power Agency

Northern California Power Agency  
Attn: Michael DeBortoli, Lodi Energy Center Manager  
651 Commerce Drive  
Roseville, California, 95678  
Telephone: (209) 210-5000  
Facsimile: (209) 333-5215  
Email: [michael.debortoli@ncpa.com](mailto:michael.debortoli@ncpa.com)

With copies to:

Northern California Power Agency  
Attn: Ken Speer, Assistant General Manager – Generation Services  
651 Commerce Drive  
Roseville, California, 95678  
Telephone: (916) 781-4201  
Facsimile: (916) 783-7693  
Email: [ken.speer@ncpa.com](mailto:ken.speer@ncpa.com)

Northern California Power Agency  
Attn: David Dockham, Assistant General Manager – Power Management  
651 Commerce Drive  
Roseville, California, 95678  
Telephone: (916) 781-4256  
Facsimile: (916) 783-4252  
Email: [dave.dockham@ncpa.com](mailto:dave.dockham@ncpa.com)

### City of Azusa

City of Azusa  
Azusa Light & Water Department  
Attn: George Morrow, Electric Utility Director  
729 N. Azusa Avenue  
P.O. Box 9500  
Azusa, California 91702-9500  
Telephone: (626) 812-5219  
Facsimile: (626) 334-3163  
Email: [gmorrow@ci.azusa.ca.us](mailto:gmorrow@ci.azusa.ca.us)

Bay Area Rapid Transit District

Bay Area Rapid Transit District  
Attn: Connee Lloyd  
300 Lakeside Drive, 16<sup>th</sup> Floor  
Oakland, California 94612-3534  
Telephone: (510) 464-6435 or (510) 915-2509  
Facsimile: (510) 464-6118  
Email: [clloyd@bart.org](mailto:clloyd@bart.org)

Modesto Irrigation District

Modesto Irrigation District  
Attn: James McFall  
Resource Planning and Development Manager  
P.O. Box 4060  
1231 Eleventh Street  
Modesto, California 95352  
Telephone: (209) 526-1521  
Facsimile: (209) 526-7575  
Email: [jamesm@mid.org](mailto:jamesm@mid.org)

California Department of Water Resources:

Department of Water Resources  
Attention: ~~William Forsythe, Chief, Power Contracts Branch~~ John Yarbrough, Chief Power  
Planning and Contract Management  
2135 Butano Drive, Suite 100/~~Room 125~~  
Sacramento, California ~~95825~~ 95835  
Telephone: (916) 574-~~03100665~~  
Facsimile: (916) 574-0660  
Email: ~~william.forsythe@water.ca.gov~~ john.yarbrough@water.ca.gov

Plumas-Sierra Rural Electric Cooperative

Plumas-Sierra REC  
Attn: Bob Marshall, General Manager  
73233 Highway 70  
Portola, California 96122-7064  
Telephone: (530)832-4261  
Facsimile: (530)832-6070  
Email: [marshall@psln.com](mailto:marshall@psln.com)

City of Biggs

City of Biggs  
Attn: Mark Sorensen, City Administrator  
465 "C" Street  
P.O. Box 307  
Biggs, California 95917-0307  
Telephone: (530) 868-5493  
Facsimile: (530) 868-5239  
Email: [biggs1@biggs-ca.gov](mailto:biggs1@biggs-ca.gov)

City of Gridley

City of Gridley  
Attn: Gary Davidson, Council Member  
685 Kentucky Street  
Gridley, California 95948-2117  
Telephone: (530) 933-4061  
Facsimile: (530) 846-3229  
Email: [davidsongdd@yahoo.com](mailto:davidsongdd@yahoo.com)

City of Healdsburg

City of Healdsburg  
Attn: Terry Crowley, Electric Utility Director  
401 Grove Street  
Healdsburg, California 95448  
Telephone: (707) 431-3340  
Facsimile: (707) 431-2710  
Email: [tcrowley@ci.healdsburg.ca.us](mailto:tcrowley@ci.healdsburg.ca.us)

City of Lodi

City of Lodi  
Attn: Elizabeth Kirkley, Utility Director  
1331 S. Ham Lane  
Lodi, California 95242  
Telephone: (209) 333-6828 or (209) 200-1107  
Facsimile: (209) 333-6839  
Email: [ekirkley@lodi.gov](mailto:ekirkley@lodi.gov)

City of Lompoc

City of Lompoc  
Attn: Tikan Singh  
100 Civic Center Plaza  
P.O. Box 8001  
Lompoc, California 93438-8001  
Telephone: (805) 736-1261 (switchboard)  
Facsimile: (805) 875-8399  
Email: [t\\_singh@ci.lompoc.ca.us](mailto:t_singh@ci.lompoc.ca.us)

Silicon Valley Power

Silicon Valley Power  
Attn: John Roukema, Electric Utility Director  
1500 Warburton Avenue  
Santa Clara, California 95050  
Telephone: (408) 261-5490  
Facsimile: (408) 249-0217  
Email: [jroukema@siliconvalleypower.com](mailto:jroukema@siliconvalleypower.com)

City of Ukiah

City of Ukiah  
Attn: Mel Grandi, Utility Director  
300 Seminary Avenue  
Ukiah, California 95482  
Telephone: (707) 463-6295 or (209) 747-0546  
Facsimile: (707) 463-6740  
Email: [mgrandi@cityofukiah.com](mailto:mgrandi@cityofukiah.com)

Power and Water Resources Pooling Authority

Power and Water Resources Pooling Authority  
Attn: Bruce McLaughlin  
Braun, Blaising, McLaughlin & Smith, P.C.  
915 L Street, Suite 1480  
Sacramento, CA 95815  
Telephone: (916) 326-5812 (main) (916) 531-5566 (direct)  
Email: [mclaughlin@braunlegal.com](mailto:mclaughlin@braunlegal.com)