



651 Commerce Drive
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Agenda – Legal Committee Meeting

Meeting Date: March 7, 2024 Legal Committee Meeting
Location: Meeting held at NCPA Headquarters and via Teleconference Posted Locations
Time: 9:00 a.m. PT

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

<p>Northern California Power Agency 651 Commerce Drive Roseville, CA 95678</p>	<p>City of Alameda Alameda City Attorney's Office 2263 Santa Clara Avenue, No. 280 Alameda, CA 94501</p>	<p>San Francisco Bay Area Rapid Transit District 2150 Webster Street, 1st Floor, Room 161 Oakland, CA 94612</p>
<p>City of Biggs Law Office of Gregory P. Einhorn 542 Quail Walk Way Rio Vista, CA 94571</p>	<p>City of Alameda 18217 Carmel Drive Castro Valley, CA 94546</p>	<p>City of Gridley Rich, Fuidge, Bordsen & Galyean 1129 D Street Marysville, CA 95901</p>
<p>City of Lodi 221 West Pine Street Lodi, CA 95240</p>	<p>City of Healdsburg Burke Williams & Sorenson 5625 White Mountain Court Martinez, CA 94553</p>	<p>Plumas-Sierra Rural Electric Coop Somach, Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814</p>
<p>City of Lompoc Aleshire & Wynder, LLP 6001 Boeing Place Los Angeles, CA 90045</p>	<p>City of Palo Alto Office of the City Attorney Office 250 Hamilton Avenue Palo Alto, CA 94301</p>	<p>Port of Oakland Office of General Counsel 530 Water Street Oakland, CA 94607</p>
<p>City of Redding Office of the City Attorney 777 Cypress Avenue Redding, CA 96001</p>	<p>City of Palo Alto Assistant City Attorney Office 54 Bosworth Field Mendon, NY 14506</p>	<p>City of Santa Clara 881 Martin Avenue Santa Clara, CA 95050</p>
<p>City of Roseville Civic Center-City Attorney's Office 311 Vernon Street Roseville, CA 95678</p>	<p>City of Shasta Lake [No teleconference location]</p>	<p>Truckee Donner PUD [No teleconference location]</p>
<p>City of Ukiah Rapport and Marston 405 West Perkins Street Ukiah, CA 95482</p>	<p>City of Alameda 10572 Avenida Magnifica San Diego, CA 92131</p>	<p>City of Lompoc 2682 Rosemary Lane San Bernardino, CA 92407</p>

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

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

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

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

- 2. PUBLIC COMMENT**

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

- 3. MEETING MINUTES** - Seeking approval of the minutes of the Legal Committee meeting held on February 1, 2024 (*Action Item*)

CLOSED SESSION

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

A. FERC Dockets: Rate Cases:

FERC TO18:

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

FERC TO19:

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

FERC TO20:

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

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

D.C. Circuit:

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

OPEN SESSION

4. REPORT FROM CLOSED SESSION

- 5. TRANSMISSION OWNER RATE CASE PROGRAM AGREEMENT** - Update regarding development of the Transmission Owner Rate Case Program and consideration of the proposed Transmission Owner Rate Case Program Agreement. (*Information/Discussion/Possible Action Item*)

- 6. THIRD PHASE AGREEMENT RELATED TO POWER PURCHASE AGREEMENTS DISCUSSION** - Participants in a Third Phase Agreement have executed the Amended and Restated Facilities Agreement which establishes the framework under which Project Agreements are created for the development, design, financing, construction, and operation of specific NCPA Projects including entering into a Power Purchase Agreement (PPA) with a counterparty on behalf of a member participant(s). For NCPA to fulfill the obligations of the PPA, member participants Agree to take delivery of and pay for such electric capacity and energy and to pay NCPA for all costs it incurs for undertaking these activities. Staff will discuss NCPA's agreement structure that supports the Third Phase Agreements. (*Information/Discussion Item*)

- 7. GRACE SOLAR PROJECT** – Staff will provide an update on the Project and discuss the current Third Phase Agreement and Power Purchase Agreement. (*Information/Discussion Item*)

- 8. CEQA APPROVAL RELATED TO THE POWER PURCHASE AGREEMENT PROCESS** – General Counsel Jane Luckhardt will discuss her approach to the environmental review process as it relates to approval of Third Phase Agreements and Power Purchase Agreements. (*Information/Discussion Item*)

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

10. ADJOURNMENT



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NCPA Legal Committee Meeting Minutes

Date: Thursday, February 1, 2024
Time: 9:00 a.m. Pacific Standard Time
Location: 651 Commerce Drive, Roseville, CA or via teleconference
Subject: NCPA Legal Committee Regular Meeting

1. Call Meeting to Order and Roll Call

The Legal Committee meeting was called to order at 9:01 a.m. by Chair Amy Bartell. At the time of roll call, the following members were present via Zoom:

Alameda Municipal Power-Lonnie Eldridge; Biggs-Gregory Einhorn; Healdsburg-Alan Cohen; Lodi-Katie Lucchesi; Lompoc-Joe Pannone; Palo Alto-Amy Bartell, Plumas-Sierra-Michael Vergara; Port of Oakland-Rachel Sommovilla; Redding-Christian Curtis; Roseville-Joe Mandell, Santa Clara-Daniel Ballin, and Ukiah-Darcy Vaughn. A quorum was present.

Also participating in the meeting were Natalia Ebersole-Redding, Ericka Murphy-Lompoc, NCPA General Manager Randy Howard, NCPA General Counsel Jane Luckhardt, and NCPA administrative support Linda Stone.

2. Public Comment

The Chair read the notification regarding Public Comment and asked if any member of the public would like to address the Committee. There was no public comment. It was noted that Ericka Murphy is not at a posted location.

3. Meeting Minutes

The minutes of the November 2, 2023 regular meeting were presented by staff for review and approval. Michael Vergara (Plumas-Sierra) made a motion to approve the minutes as presented; seconded by Dan Ballin (Santa Clara). There was no discussion. A roll call vote was taken, as follows. The motion passed.

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

CLOSED SESSION

The Committee went into Closed Session at 9:06 a.m. Ericka Murphy did not participate in the Closed Session.

- 4. **Conference with Legal Counsel** – Anticipated Litigation pursuant to Government Code Section 54956.9(d)(2) – one (1) case.

The meeting reconvened to Open Session at 9:28 a.m. Ericka Murphy rejoined the meeting at 9:29 a.m.

- 5. **Report from Closed Session**

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

- 6. **PacifiCorp Updated Wildfire Liability Language**

Jane Luckhardt presented a PowerPoint discussing the significant liability judgments facing PacifiCorp, noting that it may be forced to seek bankruptcy protection if judgment awards continue. She presented proposed tariff amendment language which would limit damages arising out of the

Company's provision of electric services to actual economic damages, and other limitations. Randy Howard participated in the discussion. He is working on a nationwide group to look at this limitation on liability issue, together with expanding mitigation efforts related to the health of the forests and needed resources. He said it is very important to think about what we want to put in our tariff books to limit liability. Also discussed was the idea of the federal government being the insurer of electric transmission lines as long as the utility performed certain safety measures. The committee had a robust discussion on these issues. NCPA will continue to provide periodic updates to the committee.

7. Combustion Turbine 2 Replacement Project

Jane Luckhardt provided an update on the status of this project noting that Lodi and Lompoc are electing to proceed. NCPA will also be talking with publicly owned utilities in southern California about possible interest. The project is seeking commitments now. Jane said the project provides inexpensive Resource Adequacy at \$9.5/kw-month. The project is fired with natural gas with the ability to convert to hydrogen when hydrogen becomes available. The Second Phase Agreement is currently circulating for review.

8. Lodi Energy Center Hydrogen Project

Jane Luckhardt provided a timeline update for the LEC Hydrogen Project. California's Alliance for Renewable Clean Hydrogen Energy Systems (ARCHES) is negotiating with the US Department of Energy (DOE). Once complete, ARCHES will negotiate/award to subrecipients including NCPA. Jane noted NCPA may need authority to sign an agreement with ARCHES or three-party agreement with DOE, ARCHES and NCPA. NCPA expects to know how much federal funding it will receive by this fall.

9. Grace Solar Project

Jane Luckhardt discussed the Grace Solar Project being developed by NextEra Energy Resources Development. The project capacity is a 50 MW slice of the overall 400-500 MW project. Ten members have expressed interest, including Biggs, Gridley, Healdsburg, Lodi, Lompoc, Port of Oakland, Plumas-Sierra, Shasta Lake, Santa Clara-SVP, and Ukiah. She presented the interested participants' MW percentage shares. The draft Project Participation Agreement is under review.

10. General Counsel Updates

Due to time constraints, Jane had no other updates.

11. Adjournment.

The meeting was adjourned at 10:01 a.m.

Respectfully submitted,
Linda Stone

**TRANSMISSION OWNER RATE CASE
PROGRAM AGREEMENT**

DRAFT

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EXHIBIT A (List of Participants and Program Participation Percentages) A-1

This TRANSMISSION RATE CASE PROGRAM AGREEMENT (“the Agreement”) is made effective as of _____ by and among the Northern California Power Agency, a joint powers agency of the State of California (“NCPA”) and those of its Members who execute this Agreement (“Participants”). NCPA and the Participants are referred to herein individually as a “Party” and collectively as the “Parties”.

RECITALS

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

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

C. Each of the Participants to this Agreement have executed the Power Management and Administrative Services Agreement, dated October 1, 2014, which establishes the framework under which Members who are signatory to the Power Management and Administrative Services Agreement may enter into one or more Service Agreements with NCPA.

D. Pursuant to the Power Management and Administrative Services Agreement, from time to time special conditions or requirements for services may be requested from NCPA by Members under which no existing Services Agreement is available to satisfy such needs, and at the sole discretion of the Commission, certain “one-off” agreements maybe developed between NCPA and a Member, or group of Members, to enable NCPA to provide such special services.

E. The Participants have requested NCPA to establish facilities, staff and the capability to act on behalf of the Participants to engage in certain activities, either directly, indirectly, or in conjunction with legal counsel and subject matter experts, pertaining to proceedings that effect the CAISO transmission costs, or other transmission costs as may be applicable, to protect the Participants' transmission assets and to strive to limit the Participants' exposure to increasing transmission costs when transacting in the CAISO markets, other markets, or as otherwise may be applicable.

F. In response to the Participants' desire for NCPA to engage in the activities further described in this Agreement, NCPA has established the facilities, staff and the capability for the provision of Services to the Participants in accordance with this Agreement.

G. Each Participant agrees to pay its equitable share of costs associated with NCPA's provision of Services, in accordance with the Power Management and Administrative Services Agreement and this Agreement.

H. The Participants further desire, insofar as possible, to insulate other Members, whether or not such Members are also Participants, from risks inherent in the services and transactions undertaken on behalf of any given Member or group of Members.

I. Upon full execution of this Agreement, this Agreement shall be deemed a Special Conditions Services Agreement under the Power Management and Administrative Services Agreement by the Commission.

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

NOW, THEREFORE, the Parties agree as follows:

Section 1. Definitions.

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

1.1.1 “Administrative Services Costs” means that portion of the NCPA administrative, general and occupancy costs and expenses, including those costs and expenses associated with the operations, direction and supervision of the general affairs and activities of NCPA, general management, treasury operations, accounting, budgeting, payroll, human resources, information technology, facilities management, salaries and wages (including retirement benefits) of employees, facility operation and maintenance costs, taxes and payments in lieu of taxes (if any), insurance premiums, fees for legal, engineering, financial and other services, power management services, general settlement and billing and general risk management costs, that are charged directly or apportioned to the provision of Services pursuant to this Agreement. Administrative Services Costs as separately defined herein and used in the context of this Agreement is different and distinct from the term Administrative Services Costs as defined in Section 1 of the Power Management and Administrative Services Agreement.

1.1.2 “Agreement” means this Transmission Rate Case Program Agreement, including all Exhibits attached hereto.

1.1.3 “All Resources Bill” means the single, combined monthly bill from NCPA to a Participant with respect to all NCPA services, programs and NCPA Projects.

1.1.4 “Defaulting Participant” has the meaning set forth in Section 9.2 of this Agreement.

1.1.5 "Effective Date" has the meaning set forth in Section 4.1 of this Agreement.

1.1.6 "Event of Default" has the meaning set forth in Section 9.2 of this Agreement.

1.1.7 "NCPA" has the meaning set forth in the recitals hereto.

1.1.8 "Participant" has the meaning set forth in the recitals of this Agreement. Participants to this Agreement are listed in Exhibit A of this Agreement.

1.1.9 "Party" or "Parties" has the meaning set forth in the recitals hereto; provided that "Third Parties" are entities that are not part to this Agreement.

1.1.10 "Power Management and Administrative Services Agreement" means the NCPA Power Management and Administrative Services Agreement, dated as of October 1, 2014 between NCPA and the Members who are signatories to that agreement by which NCPA provides Power Management and Administrative Services.

1.1.11 "Program Participation Percentage" means the Participant Program Participation Percentages set forth in Exhibit A of this Agreement.

1.1.12 "Services" has the meaning set forth in Section 2.1 of this Agreement.

1.1.13 "Term" has the meaning set forth in Section 4.1 of this Agreement.

1.1.14 "Transmission Owner" or "TO" has the meaning set forth in the CAISO Tariff.

1.2 Rules of Interpretation. All words and references as used in this Agreement (including the Recitals hereto), unless in any such case the context requires

otherwise, shall be interpreted pursuant to Section 1.2 of the Power Management and Administrative Services Agreement.

Section 2. Services to be Provided, Duties and Standards of Performance.

2.1 Services. The purpose of this Agreement is to set forth the terms and conditions under which NCPA, acting on behalf of the Participants, may engage in certain activities, either directly, indirectly, or in conjunction with legal counsel and subject matter experts, pertaining to proceedings that effect CAISO transmission costs, or other transmission costs as may be applicable, to protect the Participants' transmission assets and to strive to limit the Participants' exposure to increasing transmission costs when transacting in the CAISO markets, other markets, or as otherwise may be applicable (the "Services"). Participants shall only be responsible to pay for Services performed and costs incurred subsequent to the effective date of this Agreement. Services provided in accordance with this Agreement generally include the following:

2.1.1 Representing the interests of the Participants by monitoring, analyzing, and participating in TO rate cases before FERC and any related judicial appeals, where this applies to TO rate cases and new related transmission activity matters that are filed;

2.1.2 Engaging in other related filings and industry developments that affect the cost or provision of transmission service under TO rate cases; and

2.1.3 Engaging in other transmission cost related activities as may be approved by the Participants.

2.2 Qualified Subject Matter Experts. NCPA's provision of Services under this Agreement may be supported by legal services and other specialized services relevant to NCPA's participation in proceedings that are performed by qualified subject matter experts and/or witnesses. All costs incurred by NCPA associated with the

acquisition of legal services support, or qualified subject matter experts support, associated with the Services Agreement shall be considered a Services cost pursuant to this Agreement.

2.3 Coordination with Third Parties. As part of NCPA's duties under this Agreement, NCPA shall strive to work collaboratively with other Third Party intervenors and relevant parties, and where practicable, build alliances and find common interest in promoting the Participants' interest consistent with the goals and objectives established pursuant to Section 2.8 of this Agreement. Such efforts include building coalitions, where strategically and economically viable, to support the alignment with other intervenors or to form "joint intervenor" perspectives for engaging in activities related to the Services provided hereunder. This joint effort may include coordinating and sharing responsibilities on areas of common interest to ensure the most efficient advancement of the Participants' interest, and to reduce redundancy in the Services provided by NCPA.

2.4 Participant Duties. The duties of the Participants under this Agreement are to:

2.4.1 Timely provide information to NCPA that is required for NCPA to perform Services.

2.4.2 Make timely payments to NCPA for Services invoiced by NCPA to Participants in accordance with Section 7 of this Agreement.

2.4.3 Provide staff and other assistance, as may be required from time to time, to the extent necessary for NCPA to fulfill its duties under this Agreement.

2.5 NCPA Duties. NCPA's General Manager, or his or her designee, shall establish and maintain the facilities, staff and the capability to act on behalf of the

Participants and provide Services to the Participants in accordance with this Agreement.

2.6 Standard of Performance. NCPA will perform Services using the level of skill and attention reasonably required to complete the Services in a competent and timely manner.

2.7 Assignment of Personnel. NCPA shall assign only competent personnel to perform Services pursuant to this Agreement.

2.8 Time. NCPA shall devote such time to the performance of Services pursuant to this Agreement as may be reasonably necessary to meet the standards of performance provided in Section 2.6, and to satisfy NCPA's obligations hereunder.

2.9 Consultation with Participants. The General Manager shall consult with the Participants from time to time, as needed, to advise him or her on a particular matter relevant to this Agreement. Each year, the General Manager shall propose to the Participants, as part of the Annual Budget process, specific goals and objectives for NCPA staff as such relate to this Agreement. NCPA shall provide periodic reports to the Participants regarding progress toward meeting the proposed goals and objectives. The periodic reports may include the following information:

- (a) Overview of relevant proceedings and known schedules;
- (b) Assessment of the financial impact to the Participants, to the extent practicable;
- (c) Scope of NCPA's potential engagement in each TO rate case;
- (d) Identification of potential legal actions that the Participants should consider and the likelihood of success (by argument if practicable);
- (e) Estimates of potential benefits and costs associated with engagement, to the extent practicable; and

- (f) Summary of NCPA and Third Party issues and levels of participation.

Section 3. Administration of Agreement.

3.1 Commission. The Commission is responsible for the administration of this Agreement. Each Member shall be represented by its Commissioner or their designated alternate Commissioner (“Alternate”) pursuant to the Joint Powers Agreement. Each Commissioner shall have authority to act for the Participant under this Section 3 with respect to matters pertaining to this Agreement.

3.2 Duties and Authorities. In addition to the administration of this Agreement, the duties and authorities of the Commission are as specified in the Joint Powers Agreement and the NCPA Commission Bylaws.

3.3 Forum. Whenever any action anticipated by this Agreement is required to be jointly taken by the Participants, such action shall be taken at regular or special meetings of the NCPA Commission; provided, however, activities associated with NCPA’s provision of Services and normal day-to-day engagement as described in Section 2.1 of this Agreement, are hereby delegated to the General Manager of NCPA, or his or her designee, and are not considered to be matters related to the Commission’s general administration of this Agreement, and therefore are not subject to the administrative procedures set forth in this Section 3.

3.4 Quorum. For purposes of acting upon matters that relate to the administration of this Agreement, a quorum of the Commission shall consist of those Commissioners, or their designated Alternates, representing a numerical majority of the Participants.

3.5 Voting. For acting upon matters that relate to the general administration of this Agreement, each Participant shall have the right to cast one (1) vote. Actions of

the Commission shall be effective only upon an affirmative vote of eighty percent (80%) or more of the Participants.

3.6 Adoption and Amendment of Annual Budget. Annually, the Commission shall adopt an Annual Budget, which includes, but is not limited to, all costs attributed to Services, for at least the next succeeding Fiscal Year in accordance with the NCPA Joint Powers Agreement and this Agreement. Provided, however, that the Commission may in its discretion adopt a two-year budget if permitted to do so by the NCPA Commission Bylaws or the Joint Powers Agreement.

3.7 Facilities Committee. The Facilities Committee has been established pursuant to the Amended and Restated Facilities Agreement to act as an advisory committee to the Commission. The Commission or General Manager may refer matters pertaining to the administration of this Agreement to the Facilities Committee for review and recommendation, including, but not limited to, proposed amendments to this Agreement. If the Commission or General Manager refers matters pertaining to the administration of this Agreement to the Facilities Committee, NCPA will provide a copy of the public notice of the Facilities Committee meeting at which the matter will be discussed to the Participants. The Facilities Committee may act upon such matters referred to it by the Commission in accordance with the procedures, including the general administration quorum and voting procedures, set forth in the Amended and Restated Facilities Agreement. Any recommendation of the Facilities Committee shall be made to the Commission and others, as appropriate, in coordination with the General Manager.

Section 4. Term and Termination.

4.1 Effective Date. This Agreement shall become effective on the first day of the month after which it has been duly executed by all Participants, and delivered to

and executed by NCPA (the "Effective Date"). NCPA shall notify all Participants in writing of the Effective Date.

4.2 Term and Termination. The term ("Term") Agreement shall continue in full effect until terminated by consent of all Parties.

Section 5. Admission and Withdrawal of Participants.

5.1 Admission of a New Participant. Subsequent to the initial Effective Date, a Member may become a Participant by executing this Agreement. Such Member will become a Participant effective on the date of its delivery to NCPA of an executed counterpart of this Agreement.

5.2 Withdrawal of Participants. Any Participant may withdraw from this Agreement ("**Withdrawing Participant**") by submitting notice, in writing to all Parties at least two (2) years in advance of the effective date of such withdrawal, provided that such withdrawal shall only be effective on the last day of a Fiscal Year and that the Withdrawing Participant has fully satisfied all obligations it has incurred under this Agreement. The two (2) year duration of the notice requirement may be waived or reduced by the Commission in its sole discretion. Withdrawal by any Participant shall not terminate this Agreement as to the remaining Participants.

5.3 No Effect on Prior Liabilities. Withdrawal by any Participant will not terminate any ongoing or un-discharged liabilities, credits or obligations, including any contingent liabilities, credits or obligations, resulting from this Agreement until they are satisfied in full, or such Withdrawing Participant has provided a mechanism acceptable to NCPA, for the satisfaction in full thereof.

5.4 A Withdrawing Participant shall not be obligated to compensate the remaining Participants for loss of any benefits that would have accrued to the remaining Participants if the Withdrawing Participant had continued its participation. Nor shall the remaining Participants be obligated to compensate the Withdrawing

Participant for any benefits that accrue to the remaining Participants because of the withdrawal. Reallocation of the costs and benefits of continuing under this Agreement after a Participant has withdrawn shall not give rise to any claim against a Withdrawing Participant by the remaining Parties. Nor shall any of the remaining Parties be obligated to compensate the Withdrawing Participant for any benefits that accrue to the remaining Parties because of such a reallocation of costs and benefits.

5.5 Associated Costs. A Withdrawing Participant shall reimburse NCPA for any and all costs resulting from the withdrawal, including but not limited to the legal, accounting, and administrative costs of winding up and assuring the complete satisfaction and discharge of the Withdrawing Participant's liabilities, credits or obligations, including any contingent liabilities, credits or obligations.

Section 6. Cost of Services.

6.1 Cost Allocation. All costs associated with NCPA's provision of Services to the Participants, including, but not limited to, Administrative Services Costs and costs associated with NCPA's acquisition of legal services and qualified subject matter experts services, shall be allocated among the Participants in accordance with this Agreement and the Power Management and Administrative Services Agreement. Costs allocated among the Participants in accordance with this Agreement shall be allocated to each Participant in proportion to such Participant's Program Participation Percentage as set forth in Exhibit A of this Agreement.

6.2 Program Participation Percentages. The Program Participation Percentages as set forth in Exhibit A of this Agreement may be amended from time to time, including to account for the addition or withdrawal of a Participant as set forth in Section 5 of this Agreement, by the Commission in accordance with the voting procedures set for in Section 3 of this Agreement.

Section 7. Billing and Payments.

7.1 Invoices. NCPA will issue an invoice to each Participant for its share of costs associated with Services, and all other costs for services provided in accordance with this Agreement. Such invoice may be either the All Resources Bill or separate special invoice, as determined by NCPA. Such invoices will be made pursuant to the requirements and procedures provided for in this Agreement and all other applicable agreements. At NCPA's discretion, invoices may be issued to Participants using electronic media or physical distribution.

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

7.3 Late Payments. Any amount due and not paid by a Participant in accordance with Section 9.2 shall be considered late and bear interest computed on a daily basis until paid at the lesser of (i) the per annum prime rate (or reference rate) of the Bank of America NT&SA then in effect, plus two percent (2%) or (ii) the maximum rate permitted by law.

7.4 Billing Disputes. A Participant may dispute the accuracy of any invoice issued by NCPA under this Agreement by submitting a written dispute to NCPA, within thirty (30) Calendar Days of the date of such invoice; nonetheless the Participant shall pay the full amount billed when due. If a Participant does not timely question or dispute the accuracy of any invoice in writing the invoice shall be deemed to be correct. Upon review of a submitted dispute, if an invoice is determined by NCPA to be incorrect, NCPA shall issue a corrected invoice and refund any amounts that may be due to the Participant. If NCPA and the Participant fail to agree on the accuracy of an invoice within thirty (30) Calendar Days after the Participant has disputed it, the General Manager shall promptly submit the dispute to the Commission for resolution.

If the Commission and the Participant fail to agree on the accuracy of a disputed invoice within sixty (60) Calendar Days of its submission to the Commission, the dispute may then be resolved under the mediation and arbitration procedures set forth in Section 10 of this Agreement. Provided, however, that prior to resort to either mediation or arbitration proceedings, the full amount of the disputed invoice must have been paid.

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

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

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

Section 8. Cooperation and Further Assurances.

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

Section 9. Participant Covenants and Defaults.

9.1 Each Participant covenants and agrees: (i) to make payments to NCPA, from its Electric System Revenues, of its obligations under this Agreement as an operating expense of its Electric System; (ii) to fix the rates and charges for services provided by its Electric System, so that it will at all times have sufficient Revenues to meet the obligations of this Agreement, including the payment obligations; (iii) to make all such payments due NCPA under this Agreement whether or not there is an interruption in, interference with, or reduction or suspension of services provided under this Agreement, such payments not being subject to any reduction, whether by offset or otherwise, and regardless of whether any dispute exists; and (iv) to operate its Electric System, and the business in connection therewith, in accordance with Good Utility Practice.

9.2 Events of Default. An Event of Default under this Agreement shall exist upon the occurrence of any one or more of the following by a Participant (the “Defaulting Participant”):

(i) the failure of any Participant to make any payment in full to NCPA when due, where such failure is not cured within thirty (30) Calendar Days following receipt of a notice from NCPA demanding cure;

(ii) the failure of a Participant to perform any covenant or obligation of this Agreement where such failure is not cured within thirty (30) Calendar Days following receipt of a notice from NCPA demanding cure. Provided, that this subsection shall not apply to any failure to make payments specified by subsection 9.2 (i));

(iii) if any representation or warranty of a Participant material to the services provided hereunder shall prove to have been incorrect in any material respect when made and the Participant does not cure the facts underlying such incorrect

representation or warranty so that the representation or warranty becomes true and correct within thirty (30) Calendar Days of the date of receipt of notice from NCPA demanding cure; or

(iv) if a Participant is in default or in breach of any of its covenants under any other agreement with NCPA and such default or breach is not cured within the time periods specified in such agreement.

9.3 Uncontrollable Forces. A Party shall not be considered to be in default in respect of any obligation hereunder if prevented from fulfilling such obligation by reason of Uncontrollable Forces. Provided, that in order to be relieved of an Event of Default due to Uncontrollable Forces, a Party affected by an Uncontrollable Force shall:

(i) first provide initial notice to the General Manager using telephone communication within two (2) Business Days of the onset of the Uncontrollable Force, and second provide further written notice to the General Manager and all other Parties within ten (10) Business Days of the onset of the Uncontrollable Force, describing its nature and extent, the obligations which the Party is unable to fulfill, the anticipated duration of the Uncontrollable Force, and the actions which the Party will undertake so as to remove such disability and be able to fulfill its obligations hereunder; and

(ii) use due diligence to place itself in a position to fulfill its obligations hereunder and if unable to fulfill any obligation by reason of an Uncontrollable Force such Party shall exercise due diligence to remove such disability with reasonable dispatch. Provided, that nothing in this subsection shall require a Party to settle or compromise a labor dispute.

9.4 Cure of an Event of Default. An Event of Default shall be deemed cured only if such default shall be remedied or cured within the time periods specified in Section 9.2 above, as may be applicable, provided, however, upon request of the

Defaulting Participant the Commission may waive the default at its sole discretion, where such waiver shall not be unreasonably withheld.

9.5 Remedies in the Event of Uncured Default. Upon the occurrence of an Event of Default which is not cured within the time limits specified in Section 9.2, without limiting other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action NCPA may have against the Defaulting Participant, NCPA may, for so long as such Event of Default continues uncured, take any or all of the following actions:

(i) suspend the provision of services under this Agreement to such Defaulting Participant;

(ii) demand that the Defaulting Participant provide further assurances to guarantee the correction of the default, including the collection of a surcharge or increase in electric rates, or such other actions as may be necessary to produce necessary Revenues to correct the default;

(iii) terminate this Agreement as to the Defaulting Participant, on ten (10) Calendar Days prior written notice to the Defaulting Participant; or

(iv) enforce all other rights or remedies available to it under any other agreement in which the Defaulting Participant is a signatory.

9.6 Effect of Termination or Suspension.

9.6.1 Generally. The termination or suspension of this Agreement will not terminate, waive, or otherwise discharge any ongoing or undischarged liabilities, credits or obligations arising from this Agreement until such liabilities, credits or obligations are satisfied in full.

9.6.2 Suspension. If performance of all or any portion of this Agreement is suspended by NCPA with respect to a Participant in accordance with

subsection 9.5 (i), such Participant shall pay any and all costs incurred by NCPA as a result of such suspension including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, or other reasonable and necessary costs associated with such suspension and any portion of the costs associated with NCPA's provision of Services, including Administrative Services Costs, that were not recovered from such Participant as a result of such suspension.

9.7 Termination. If this Agreement is terminated by NCPA with respect to a Participant in accordance with Section 9.5 (iii), such Participant shall pay any and all costs incurred by NCPA as a result of such termination, including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other reasonable and necessary costs associated with such termination and any portion of costs associated with NCPA's provision of Services that were not, or will not be, recovered from such Participant as a result of such termination; provided, however, if NCPA terminates this Agreement with respect to the last remaining Participant, then this Agreement shall terminate.

Section 10. Settlement of Disputes and Arbitration.

10.1 The Parties agree to make best efforts to settle all disputes among themselves connected with this Agreement as a matter of normal business under this Agreement. The procedures set forth in Section 10 of the Power Management and Administrative Services Agreement shall apply to all disputes that cannot be settled by the Participants themselves; provided, that the provisions of Section 7.4 shall first apply to all disputes involving invoices prepared by NCPA.

Section 11. Miscellaneous.

11.1 Confidentiality. The Parties will keep confidential all confidential or trade secret information made available to them in connection with this Agreement, to the extent possible, consistent with applicable laws, including the California Public Records

Act. Confidential or trade secret information shall be marked or expressly identified as such.

If a Party ("Receiving Party") receives a request from a Third Party for access to, or inspection, disclosure or copying of, any of the other Party's (the "Supplying Party") confidential data or information ("Disclosure Request"), then the Receiving Party shall provide notice and a copy of the Disclosure Request to the Supplying Party within three (3) Business Days of receipt of the Disclosure Request. Within three (3) Business Days of receipt of such notice, the Supplying Party shall provide notice to the Receiving Party either:

(i) that the Supplying Party believes there are reasonable legal grounds for denying or objecting to the Disclosure Request, and the Supplying Party requests the Receiving Party to deny or object to the Disclosure Request with respect to identified confidential information. In such case, the Receiving Party shall deny the Disclosure Request and the Supplying Party shall defend the denial of the Disclosure Request at its sole cost, and it shall indemnify the Receiving Party for all costs associated with denying or objecting to the Disclosure Request. Such indemnification by the Supplying Party of the Receiving Party shall include all of the Receiving Party's costs reasonably incurred with respect to denial of or objection to the Disclosure Request, including but not limited to costs, penalties, and the Receiving Party's attorney's fees; or

(ii) the Receiving Party may grant the Disclosure Request without any liability by the Receiving Party to the Supplying Party.

11.2 Indemnification and Hold Harmless. Subject to the provisions of Section 11.4, each Participant agrees to indemnify, defend and hold harmless NCPA and its Members, including their respective governing boards, officials, officers, agents, and employees, from and against any and all claims, suits, losses, costs, damages, expenses and liability of any kind or nature, including reasonable attorneys' fees and the costs of

litigation, including experts, to the extent caused by any acts, omissions, breach of contract, negligence (active or passive), gross negligence, recklessness, or willful misconduct of that Participant, its governing officials, officers, employees, subcontractors or agents, to the maximum extent permitted by law.

11.3 Several Liabilities. Except as otherwise provided herein, no Participant shall be liable under this Agreement for the obligations of any other Participant, each Participant shall be solely responsible and liable for performance of its obligations under this Agreement and the obligation of each Participant under this Agreement is a several obligation and not a joint obligation with those of the other Participants.

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

11.5 The Parties acknowledge that California Civil Code section 1542 provides that: “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.” The Parties waive the provisions of section 1542, or other similar provisions of law, and intend that the waiver and release provided by this Section of this Agreement shall be fully enforceable despite its reference to future or unknown claims.

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

11.7 Amendments. Amendments to the Program Participation Percentages as set forth in Exhibit A of this Agreement shall take effect after being approved by the Commission in a manner consistent with the voting procedures set forth in Section 3 of this Agreement, without the requirement of an approval of the individual Participants’ governing bodies. Except where this Agreement specifically provides otherwise, this Agreement may be amended only by written instrument executed by the Parties with the same formality as this Agreement.

11.8 Assignment of Agreement.

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

11.8.2 No Assignment. This Agreement, nor any interest herein, shall be transferred or assigned by a Party hereto except with the consent in writing of the other Parties hereto, where such consent shall not be unreasonably withheld.

Without limiting the foregoing, this Agreement shall not be assigned by Plumas-Sierra Rural Electric Cooperative without the approval in writing of the Administrator of the Rural Electrification Administration Utilities Service.

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

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

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

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

11.13 Warranty of Authority. Each Party represents and warrants that it has been duly authorized by all requisite approval and action to execute and deliver this

Agreement and that this Agreement is a binding, legal, and valid agreement enforceable in accordance with its terms.

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

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

11.16 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, each Party shall bear its own fees and costs, including attorneys' fees, associated with the action.

11.17 Counsel Representation. Pursuant to the provisions of California Civil Code Section 1717 (a), each of the Parties were represented by counsel in the negotiation and execution of this Agreement and no one Party is the author of this Agreement or any of its subparts. Those terms of this Agreement which dictate the responsibility for bearing any attorney's fees incurred in arbitration, litigation or settlement in a manner inconsistent with the provisions of Section 11.2 were intentionally so drafted by the Parties, and any ambiguities in this Agreement shall not be interpreted for or against a Party by reason of that Party being the author of the provision.

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

DRAFT

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

NORTHERN CALIFORNIA
POWER AGENCY
651 Commerce Drive
Roseville, CA 95678

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

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Approved as to form:

Approved as to form:

By: _____
Its: _____
Date: _____

By: _____
Its: _____
Date: _____

CITY OF BIGGS
465 "C" Street
Biggs, CA 95917

CITY OF GRIDLEY
685 Kentucky Street
Gridley, CA 95948

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

Approved as to form:

Approved as to form:

By: _____

Its: _____

Date: _____

By: _____

Its: _____

Date: _____



CITY OF HEALDSBURG
401 Grove Street
Healdsburg, CA 95448

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

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

Approved as to form:

Approved as to form:

By: _____

Its: _____

Date: _____

By: _____

Its: _____

Date: _____

CITY OF LOMPOC
100 Civic Center Plaza
Lompoc, CA 93436

CITY OF OAKLAND, acting
by and through its
Board of Port Commissioners
530 Water Street
Oakland, CA 94607

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Its: _____

Date: _____

Approved as to form:

By: _____

Its: _____

Date: _____

CITY OF PALO ALTO
250 Hamilton Avenue
Palo Alto, CA 94301

PLUMAS-SIERRA RURAL
ELECTRIC COOPERATIVE
73233 Highway 70
Portola, CA 96122

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

Approved as to form:

Approved as to form:

By: _____

Its: _____

Date: _____

By: _____

Its: _____

Date: _____

CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, CA 95050

SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT (BART)
300 Lakeside Drive, 16th Floor
Oakland, CA 94612

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

Approved as to form:

Approved as to form:

By: _____

Its: _____

Date: _____

By: _____

Its: _____

Date: _____

CITY OF UKIAH
300 Seminary Avenue
Ukiah, CA 95482

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Its: _____

Date: _____

DRAFT

EXHIBIT A

LIST OF PARTICIPANTS AND PROGRAM PARTICIPATION PERCENTAGES

The following is a list of the Participants who are signatory to this Agreement, and each Participant's respective Program Participation Percentage:

Participants	Program Participant Percentages
City of Alameda	4.75%
BART	5.01%
City of Biggs	0.20%
City of Gridley	0.45%
City of Healdsburg	0.98%
City of Lodi	6.28%
City of Lompoc	1.86%
City of Palo Alto	11.64%
Plumas Sierra REC	2.14%
Port of Oakland	1.62%
City of Santa Clara	63.55%
City of Ukiah	1.51%
Total	100.00%

Note: The Program Participation Percentages listed in this Exhibit A are consistent with each Participant's project participation percentage listed in Table A of Commission Resolution 23.122. The Program Participant Percentages listed in the Exhibit A can be amended by the Commission from time to time, pursuant to the voting procedures set forth in Section 3 of this Agreement.