



651 Commerce Drive
Roseville, CA 95678

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Notice – Call of Special Legal Committee Meeting

Notice Date: January 8, 2019
To: NCPA Legal Committee
From: Molly Stump, Vice-Chair
Meeting Date: **January 11, 2019 NCPA Special Legal Committee Meeting**

PLEASE TAKE NOTICE that pursuant to Government Code section 54956, a special meeting of the Northern California Power Agency Legal Committee is hereby called for Friday, January 11, 2019, at 10:00 a.m. Pacific Time to discuss those matters listed in the attached Agenda. The meeting will be held at the Northern California Power Agency headquarters, 651 Commerce Drive, Roseville, California 95678.

If you are unable to attend the meeting in person at the Roseville location and wish to attend via teleconference, in accordance with the Brown Act, you must attend at one of the locations listed on the Agenda and post the Agenda at that location no later than 24-hours prior to the meeting commencement date and time, in a location that is accessible to the public until the completion of the meeting.



Molly Stump, Legal Committee Vice-Chair



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Agenda – Legal Committee Meeting

Notice Date: January 9, 2019
Meeting Date: **January 11, 2019 Special Legal Committee Meeting**
Location: 651 Commerce Drive, Roseville, CA, and via Teleconference locations
Time: 10:00 a.m. PST

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 publically accessible location at the participation location at least 24-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>Bay Area Rapid Transit 300 Lakeside Drive, 16th Floor Oakland, CA 94612</p>	<p>City of Biggs Law Offices of Gregory P. Einhorn 854 Manzanita Court, Suite 110 Chico, CA 95926</p>
<p>City of Healdsburg Burke Williams 101 Howard Street, Suite 400 San Francisco, CA 94105</p>	<p>City of Lodi 221 West Pine Street Lodi, CA 95242</p>	<p>City of Lompoc 600I Boeing Place Los Angeles, CA 90045</p>
<p>City of Palo Alto Palo Alto City Attorney's 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>Plumas-Sierra Rural Electric Coop Somach, Simmons & Dunn 500 Capitol Mall, Suite 1000 Sacramento, CA 95814</p>
<p>City of Redding 777 Cypress Avenue Redding, CA 96001</p>	<p>City of Roseville Civic Center-City Attorney's Office 311 Vernon Street Roseville, CA 95678</p>	<p>City of Santa Clara Santa Clara City Attorney's Office 1500 Warburton Ave. Santa Clara, CA 95050</p>
<p>City of Shasta Lake Kenny & Norine 2701 Park Marina Drive Redding, CA 96001</p>	<p>City of Ukiah Rapport and Marston 405 West Perkins Street Ukiah, CA 95482</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.

Time estimates are provided as part of the Legal Committee effort to manage its time at the meetings. Listed times are estimated only and are subject to change at any time, including while the meeting is in progress. The Legal Committee reserves the right to use more or less time on any item, to change the order of items, and/or to continue items to another meeting. Particular items may be heard before or after the time estimated on the agenda. This may occur in order to best manage the time at a meeting or to adapt to the participation of the public. To ensure participation in a particular item, we suggest arriving at the beginning of the meeting and remaining until the item is called.

1. CALL MEETING TO ORDER AND ROLL CALL (10:00-10:05 a.m.)

2. PUBLIC COMMENT (10:05-10:10 a.m.)

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. WILDFIRE LIABILITY DISCUSSION (10:10-10:30 a.m.)

4. NCPA'S NON-DISCLOSURE OF CONFIDENTIAL INFORMATION AND LICENSE TO USE INTELLECTUAL PROPERTY (10:30-10:50 a.m.) – Review and discussion of Amended and Restated Agreement

CLOSED SESSION

5. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Government Code Section 54956.9(d)(4) - One (1) case. **(10:50-11:15 a.m.)**

6. REPORT FROM CLOSED SESSION (11:15-11:20 a.m.)

7. GENERAL COUNSEL UPDATES (11:20-11:30 a.m.)

NCPA General Counsel will update the Committee on miscellaneous business matters of interest.

8. ADJOURNMENT

Agenda Item No. 3. Wildfire Liability Discussion

Attached for review are excerpts from various project operating agreements.

**AGREEMENT FOR CONSTRUCTION, OPERATION AND FINANCING
OF THE NORTH FORK STANISLAUS RIVER
HYDROELECTRIC DEVELOPMENT PROJECT**

This Agreement, dated as of September 1, 1982, by and among Northern California Power Agency, a joint powers agency of the State of California (hereinafter called "NCPA") and the other entities executing this Agreement.

WITNESSETH:

WHEREAS, NCPA and Calaveras County Water District (hereinafter called "CCWD") entered into a Memorandum of Understanding, dated May 31, 1977 and June 2, 1977, amended on November 2, 1978, and further amended on November 19, 1979, under which CCWD agreed to construct and own a hydroelectric project on the North Fork Stanislaus River and to sell capacity and energy of such project to NCPA, which Memorandum of Understanding, as so amended, has terminated or will terminate upon the issuance of the Federal Energy Regulatory Commission license for the Project;

WHEREAS, NCPA and its members entered into a "Member Agreement for Financing of Planning and Development Activities of the Calaveras Hydroelectric Project" made as of June 26, 1980, providing for the financing of certain planning activities in connection with the Project (said Contract, as it may be amended and supplemented from time to time, being hereinafter called the "Second Phase Agreement"); and

WHEREAS, this Agreement is the "Final Power Contract" contemplated in the Second Phase Agreement; and

WHEREAS, NCPA and CCWD entered into the North Fork Stanislaus River Hydroelectric Development Project Power Purchase Contract, dated as of July 6, 1981, providing for the financing, construction, ownership and operation of the Project, the sale of capacity and energy of the Project to NCPA, and the security for Bonds to be issued to finance the Project (said Contract, as it may be amended and supplemented from time to time, being hereinafter called the "Power Purchase Contract"); and

WHEREAS, NCPA and its members have entered into one of three Member Service Agreements, effective February 12, 1981 (said Agreements, as they may be amended and supplemented from time to time, being hereinafter called the "Member Service Agreement"), which provide for services which NCPA shall perform for its members, among other things, and for the provisions to be contained in Second and Third Phase agreements, such as the Second Phase Agreement, and this Agreement; and

Entitlement Percentage of the capacity and energy of the Project to which NCPA is entitled under the Power Purchase Contract.

(b) NCPA will remain available to do all things necessary and possible to deliver or cause to be delivered to or for the Project Participants in accordance with their respective Project Entitlement Percentages of the capacity and energy of the Project to which NCPA is entitled under the Power Purchase Contract. Such delivery shall be at points mutually agreed upon by NCPA and the respective Project Participants. Such agreement shall not be unreasonably withheld by either NCPA or the respective Project Participants. NCPA will remain available to make or cause to be made all necessary and possible arrangements for transmission of such capacity and energy over the lines of NCPA or others, and for additional capacity and energy required from others as reserves against planned or emergency service interruptions with respect to the Project. Wheeling or delivery services by NCPA with related energy sales to the Project Participants shall be as provided in service schedules as provided in Article III of the Member Service Agreement.

5. Rates and Charges. (a) Commencing on the Full Operation Date, NCPA shall fix charges to the Project Participants under this Agreement to produce revenues to NCPA from the Project equal to the amounts anticipated to be needed by NCPA to meet the total costs of NCPA to provide capacity and energy from the Project, including but not limited to (i) debt service on the Bonds, reserves for the payment of debt service on the Bonds and other payments required under the Bond Resolution other than payments described in (iii) below, (ii) all other payments provided to be made by NCPA under the Power Purchase Contract, (iii) any other operation, maintenance and replacement costs of the Project, a reasonable reserve for contingencies, and all other Project costs other than costs and expenses pursuant to Section 4(b), and (iv) costs and expenses of NCPA for delivering Project capacity and energy pursuant to Section 4(b) of this Agreement. NCPA shall fix charges to the Project Participants to produce revenues to NCPA from the Project to meet the costs described in (i) and (ii) above based on Project Entitlement Percentages and to meet the costs described in (iii) above based on the anticipated energy sales of the Project. If NCPA delivers Project capacity and energy to or for any Project Participant pursuant to Section 4(b) of this Agreement, NCPA shall fix charges to each such Project Participant so as to pay the costs of such delivery without liability to any Project Participant for whom Project capacity and energy is not so delivered by NCPA.

(b) To the extent that the funds provided under Section 5(a) of this Agreement are not sufficient for such purposes, each Project Participant shall pay to NCPA an amount equal to such Project Participant's Project Entitlement Percentage of the total cost to pay all amounts of principal and interest on the Bonds, reserves for the payment of debt service and other payments required under the Bond Resolution and all other payments required to be made by NCPA under

the Power Purchase Contract. The obligation of this Section 5(b) is incurred by each Project Participant for the benefit of future holders of Bonds, and shall commence and continue to exist and be honored by Project Participants whether or not capacity or energy is furnished to them from the Project at all times or at all (which provision may be characterized as an obligation to pay all costs on a take-or-pay basis whether or not such Project capacity or energy is delivered or provided).

(c) Each Project Participant shall make payments under this Agreement solely from the Revenues of, and as an operating expense of, its Electric System; provided, however, that so long as no Bonds other than Temporary Bonds are outstanding, to the extent stated in the Bond Resolution authorizing Temporary Bonds then outstanding, Project Participants shall make payments under this Agreement from the Revenues of such Project Participants' Electric Systems but only after the payment of operating expenses thereof. Each Project Participant hereby pledges its Revenues to the payments required hereunder. Nothing herein shall be construed as prohibiting any Project Participant from using any other funds and revenues for purposes of satisfying any provisions of this Agreement. In the event that payments under this Agreement as an operating expense of a Project Participant's Electric System would violate the provisions of an agreement to which such Project Participant is a party, such Project Participant shall, if so requested by NCPA, with all diligence proceed to comply with the provisions of any such agreement so as to constitute the payments under this Agreement as an operating expense. So long as a Project Participant is in compliance with all its obligations hereunder, such pledge shall not prevent its application of Revenues to other operating expenses of its Electric System or, subject to the payment of such operating expenses, to other lawful purposes, nor impair the rights of any recipient of Revenues lawfully so applied.

(d) Each Project Participant shall make payments under this Agreement whether or not the Project is completed, operable, operating or retired and notwithstanding the suspension, interruption, interference, reduction or curtailment of Project output or the capacity and energy contracted for in whole or in part for any reason whatsoever. Such payments are not subject to any reduction, whether by offset or otherwise, and are not conditioned upon performance by CCWD, NCPA or any other Project Participant under this Agreement or any other agreement.

(e) No Project Participant shall be liable under this Agreement for the obligations of any other Project Participant. Each Project Participant shall be solely responsible and liable for performance of its obligations under this Agreement and for the maintenance and operation of its respective properties not included as part of the Project. The obligation of each Project Participant to make

payments under this Agreement is a several obligation and not a joint obligation with those of the other Project Participants.

(f) Each Project Participant covenants and agrees to establish and collect fees and charges for electric capacity and energy furnished through facilities of its Electric System sufficient to provide Revenues adequate to meet its obligations under this Agreement and to pay any and all other amounts payable from or constituting a charge and lien upon any or all such Revenues.

(g) Each Project Participant covenants and agrees that it shall, at all times, operate the properties of its Electric System and the business in connection therewith in an efficient manner and at reasonable cost and shall maintain its Electric System in good repair, working order and condition.

6. Annual Budget and Billing Statement. Prior to the beginning of each NCPA fiscal year, NCPA will adopt an annual budget for such fiscal year for costs and expenses relating to the Project and shall promptly give notice to each Project Participant of its projected share of such costs and expenses. A billing statement prepared by NCPA will be sent to each Project Participant not later than the fifteenth (15th) day after the end of each calendar month showing the amount payable by such Project Participant of costs payable under Section 5(a) of this Agreement for the next preceding calendar month, the amount payable by such Project Participant as its Project Entitlement Percentage of costs payable under Section 5(b) of this Agreement for the next succeeding calendar month, and the amount of any credits. Amounts shown on the billing statement are due and payable thirty (30) days after the date of the billing statement. Any amount due and not paid by the Project Participant within thirty (30) days after the date of the billing statement shall bear interest from the due date until paid at an annual rate to be established by NCPA at the time of adoption of the annual budget.

On or before the day five (5) calendar months after the end of each NCPA fiscal year, NCPA shall submit to each Project Participant a statement of the aggregate monthly costs for such fiscal year. If the actual aggregate monthly costs and the Project Participant's Project Entitlement Percentage thereof pursuant to this Agreement, and other amounts payable for any fiscal year, exceed the estimate thereof on the basis of which the Project Participant has been billed, the deficiency shall be added to the next succeeding billing statement. If the actual aggregate monthly costs and the Project Participant's Project Entitlement Percentage thereof and any adjustment of or credit to the Project Participant's Project Entitlement Percentage thereof or other amounts payable for any fiscal year are less than the estimate on the basis of which the Project Participant has been billed, NCPA shall credit such excess against the Project Participant's next billing statement.

(c) If NCPA can purchase equivalent capacity and/or energy from other sources for less than the Project Participant's cost for surplus capacity and/or energy, as the case may be, the sales price of such capacity and/or energy to another Project Participant or NCPA member shall be equal to the cost of purchasing the capacity and/or energy from such other source.

(d) If the alternative cost of purchasing capacity and/or energy for other Project Participants or members of NCPA is more than the Project Participant's cost of surplus capacity and/or energy from the Project, then the sales price shall be the Project Participant's cost plus one-half the difference between the Project Participant's cost and the cost of capacity and/or energy from an alternative source.

11. Insurance and Indemnification. NCPA shall obtain or cause to be obtained insurance for the Project covering such risks, in such amounts and with such deductibles as shall be determined by NCPA. NCPA shall indemnify and hold harmless each Project Participant from any liability for bodily injury or property damage resulting from any accident or occurrence arising out of or in any way related to the construction or operation of the Project.

12. Member Direction and Review. NCPA shall comply with all lawful directions of the Project Participants with respect to this Agreement, while not stayed or nullified, to the fullest extent authorized by law. Actions of Project Participants, including giving above directions to NCPA, will be taken only at meetings of authorized representatives of Project Participants duly called and held pursuant to the Ralph M. Brown Act.

(a) A quorum of the NCPA Commission for purposes of acting upon matters related to the Project shall consist of those Commissioners, or their designated alternates, representing a numerical majority of the Project Participants, or, in the absence of such, those Commissioners representing Project Participants having a combined Project Entitlement Percentage of at least 50%.

(b) Special meetings of the Commission to act only on matters relating to the Project may be called by a majority of the Commissioners of Project Participants upon notice as required by the Ralph M. Brown Act.

(c) At regular or special meetings of the Commission, voting on matters relating to the Project shall be by Project Entitlement Percentage, and a 50% or greater affirmative vote shall be required to take action, unless the Project Participants agree at such meetings that voting will be on a one member one vote basis, with a majority vote of those present required for action.

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AMENDED AND RESTATED MEMBER AGREEMENT
FOR CONSTRUCTION, OPERATION AND FINANCING
OF NCPA GEOTHERMAL GENERATING UNIT #2 PROJECT

This Agreement, made as of January 1, 1980, by and between Northern California Power Agency, a joint powers agency of the State of California, hereinafter called "NCPA," and those of its members who execute this Agreement, hereinafter called "Purchasing Participating Members," witnesseth: that

WHEREAS, NCPA and those of its members therein designated as "Participating Members" entered into an agreement called "NCPA Member Agreement for Participation in Electric Power Development Fund," dated July 1, 1975, as amended, hereinafter called the Development Fund Agreement, to provide for the development and planning of electric generating projects and associated works and which Development Fund Agreement resulted in the creation of the following "Participating Percentages" among those Participating Members:

City of Alameda	14.994%
City of Biggs	0.167%
City of Gridley	0.334%
City of Healdsburg	3.177%
City of Lodi	14.560%
City of Lompoc	3.266%
City of Roseville	3.177%
City of Santa Clara	54.651%
City of Ukiah	4.972%
Plumas-Sierra R. E. C.	<u>0.702%</u>
	100.000%

1 and for additional power required from others as reserves against
2 planned or emergency service interruptions.

3 5. Rates and Charges. Until Bonds are issued, total
4 costs of the Project to NCPA will be paid pursuant to the Develop-
5 ment Fund Agreement.

6 (a) Commencing with the commercial operation of the
7 Project, NCPA or a nonprofit corporation undertaking to
8 finance the Project on behalf of NCPA, shall fix charges
9 based on the anticipated power output of the Project to
10 produce Revenues not exceeding the amounts anticipated
11 to be needed to meet the total costs to provide power from
12 the Project, including but not limited to debt service on
13 Bonds, purchase of steam and all other payments provided
14 for under the Shell Agreement, operation and maintenance
15 costs and necessary replacements, and a reasonable reserve
16 for contingencies, and to repay NCPA for all other Project
17 costs.

18 (b) Commencing with the issuance of Bonds for the
19 Project, but only to the extent that the funds provided
20 under Section 5(a) hereof are not sufficient for such
21 purpose and that the obligations under this Section 5(b)
22 of the Purchasing Participating Members are pledged or
23 assigned at the sole discretion of NCPA under any security
24 agreement for Project Bonds of NCPA or a nonprofit cor-
25 poration which has issued Project Bonds on behalf of NCPA,
26 each Purchasing Participating Member shall pay to NCPA,
27 to such corporation or to an assignee of either of them
28 (consent to which assignment is hereby given) an amount

1 no other adequate assurance is available.

2 (j) No transfers, assignments, sales or exchanges
3 shall diminish any Purchasing Participating Member's
4 Project allocation without its consent, except in the
5 case of a Purchasing Participating Member which sells
6 its Electric System, and then only as provided in sub-
7 section (i), and except as provided in Section 5B.

8 7. Insurance and Indemnification. NCPA will obtain
9 comprehensive and adequate casualty insurance on this Project.
10 NCPA shall also indemnify and hold harmless its Purchasing
11 Participating Members from any liability for bodily injury or
12 property damage resulting from any accident or occurrence arising
13 out of or in any way related to its construction and operation
14 of such Project, and shall obtain insurance for such indemnifica-
15 tion agreements in limits fixed by NCPA.

16 8. Decisions. All decisions and expenditures by NCPA
17 under this Agreement shall be made in the manner provided for
18 decisions and expenditures in the Development Fund Agreement.

19 9. Term. This Agreement shall not take effect until
20 it has been executed by all Participating Members. This Agree-
21 ment shall not be binding upon Plumas-Sierra Rural Electric
22 Cooperative until approved in writing by the Administrator of
23 the Rural Electrification Administration. The term of this
24 Agreement shall continue until all Bonds issued have been re-
25 quired, or full provisions made for their retirement, including
26 interest until retirement date.

27 10. Termination and Amendments. This Agreement shall
28 not be subject to termination by any party under any circum-

Following is a short summary of the WAPA Wildfire liability:

United States owns the CVP transmission lines and they are under WAPA's administrative control. If someone brings a claim against WAPA for a loss due to fire, it must be brought under the Federal Tort Claims Act. If we assume it's a large fire then after an administrative determination, if the agency denies it, the claimant can file at district court. There the Department of Justice would defend the suit. If the matter is litigated in District Court, unless otherwise directed by Congress, any adverse judgements under the FTC are paid from the federal Judgement Fund -- and not from Reclamation Fund.



Commission Staff Report

January 9, 2019

COMMISSION MEETING DATE: January 17, 2019

SUBJECT: Amended and Restated Agreement Regarding the Use and Non-Disclosure of Confidential Information and License to Use Intellectual Property

AGENDA CATEGORY: Consent

FROM:	Tony Zimmer	METHOD OF SELECTION:
	AGM, Power Management	N/A
Division:	Power Management	<i>If other, please describe:</i>
Department:	Power Management	

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

RECOMMENDATION:

Northern California Power Agency (NCPA) staff recommends that the Commission adopt and approve the Amended and Restated Agreement Regarding the Use and Non-Disclosure of Confidential Information and License to Use Intellectual Property (Amended and Restated NDA), and authorize the General Manager of NCPA, acting on behalf of NCPA, to execute the Amended and Restated NDA upon execution by Member or Customer.

BACKGROUND:

Pursuant to Commission Resolution 13-42, adopted on March 21, 2013, NCPA implemented the Agreement Regarding the Use and Non-Disclosure of Information for NCPA Projects (NDA) to establish a process and requirements used to protect certain commercially sensitive information (Confidential Information) that may be released by NCPA, and to ensure that parties who may receive such Confidential Information use and manage such information properly.

DISCUSSION:

The NDA was developed at a time when the primary software tool used by NCPA to distribute Confidential Information was the NCPA Data Portal, and as such, many of the provisions contained within the NDA specifically refer to use of the NCPA Data Portal for such purpose. NCPA has since developed a number of additional software tools and applications through which NCPA may distribute Confidential Information (e.g., NCPA Connect), and NCPA staff now believe it is necessary to revise the NDA to generalize references contained in the NDA regarding the types of electronic media NCPA may use for such purpose. NCPA has also developed a number of software tools and applications (Intellectual Property) that NCPA allows its Members and Customers to use to conduct their business activities. To ensure NCPA's Intellectual Property is protected, NCPA staff believe the NDA should also be revised to clarify that while NCPA may provide a nonexclusive license to its Members and Customers for use of NCPA's Intellectual Property, in doing so NCPA is not selling, giving or transferring such Intellectual Property to anyone, including its Members and Customers.

To address the items described above, NCPA staff have developed an Amended and Restated NDA to replace the existing NDA. The Amended and Restated NDA includes language that is inclusive of all electric media through which NCPA may distribute Confidential Information, and includes provisions to manage and protect the use of NCPA's Intellectual Property. A copy of the Amended and Restated NDA has been attached hereto for your reference.

FISCAL IMPACT:

Work associated with developing the Amended and Restated NDA was undertaken pursuant to approved NCPA budget categories, and costs associated with this effort are allocated in accordance with approved cost allocation methodologies as described in the NCPA annual budget.

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.

COMMITTEE REVIEW:

The Amended and Restated NDA provided herein was reviewed by the Facilities Committee on January 2, 2019, and was recommended for Commission approval. In addition, the Legal Committee will review the Amended and Restated NDA during its meeting on January 11, 2019.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments: (2)

- Resolution 19-10
- Amended and Restated Agreement Regarding the Use and Non-Disclosure of Confidential Information and License to Use Intellectual Property

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Use of Confidential Information.

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

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

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

6. Notice of Pending Third Party Disclosure.

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

7. Intellectual Property.

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

- (b) NCPA hereby grants to Receiving Party a nonexclusive, nontransferable and nonsublicensable license for its own internal use to use NCPA's Intellectual Property in conjunction with the services provided by NCPA as part of NCPA Agreements and in accordance with the guidelines provided by NCPA from time to time including but not limited to that Intellectual Property accessed through Delivery Media or other direct or indirect electronic means. Receiving Party agrees that NCPA shall retain ownership of all such Intellectual Property. Any and all use of NCPA's Intellectual Property by Receiving Party shall inure to the benefit of NCPA.
- (c) Receiving Party shall not copy, reproduce, distribute, display, modify, or create derivative works based upon all or any portion of the Intellectual Property in any medium, electronic or otherwise, without the express written consent of NCPA. In addition, Receiving Party shall not provide Intellectual Property to Third Parties or services to Third Parties using Intellectual Property.
- (d) Upon termination of this Agreement or any of the NCPA Agreements, Receiving Party shall cease using the Intellectual Property and shall not thereafter adopt, use or reverse engineer any colorable imitation of any Intellectual Property.

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

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

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

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

12. Notices.

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

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

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

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

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

Receiving Party:

Entity Name: _____

Name of Contact (person or position): _____

Address: _____

Telephone: _____

Email: _____

NCPA:

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

and

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

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

13. Complete Agreement; No Other Rights.

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

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

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

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

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

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

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

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

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

NORTHERN CALIFORNIA POWER AGENCY

By: _____

Name: Randy Howard

Title: General Manager

Date:

RECEIVING PARTY:

By: _____

Name:

Title:

Date:

EXHIBIT A

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

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

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

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

Dated: _____

Signed: _____

By: _____

Telephone: _____

Email: _____

EXHIBIT B

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

Name of Consulting Entity: _____

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

Located at:
(address of Consulting Entity): _____

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

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

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

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

Dated: _____

Consulting Entity: _____

By: _____

Print Name: _____

Telephone: _____

Email: _____

Alternate proposed language to Amended and Restated NDA – paragraph 8:

Cyber Security. Receiving Party shall notify NCPA no less than 24-hours after discovery of a potential compromise of Receiving Party's network, computers, applications or electronic systems in any way that would provide unauthorized access or negatively impact the confidentiality, integrity, or availability of NCPA systems.