



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Adopt a resolution authorizing the City Manager to execute the City of Lodi Letter Member Agreement (Second Phase) for Financing of Planning and Development Activities of Hydroelectric Project Number Two the Poe Hydroelectric Project between Northern California Power Agency and the City of Lodi (EUD)

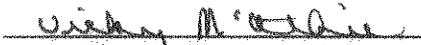
MEETING DATE: May 7, 2003

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: That the City Council adopt a resolution authorizing the City Manager to execute the City of Lodi Letter Member Agreement (Second Phase) for Financing of Planning and Development Activities of Hydroelectric Project Number Two the Poe Hydroelectric Project between Northern California Power Agency and the City of Lodi.

BACKGROUND INFORMATION: The Northern California Power Agency (NCPA) has undertaken for the City of Lodi Electric Utility Department (EUD) and other NCPA members a process to bring the Pacific Gas & Electric (PG&E) POE Hydroelectric Project under NCPA member control. PG&E was late with its required filing for a Hydroelectric license to the Federal Energy Regulatory Agency (FERC). This opened the use of the facilities to those that filed for use of the facility on time of which NCPA was one. This member agreement authorizes NCPA to pursue legal and other studies to achieve this process. Lodi's anticipated share and cost exposure is between \$50,000 to \$90,000 and Lodi's share of resource would be about 42,000 MWh annually for the acquisition of this below market resource.

FUNDING: 1060642 – Bulk Power Budget

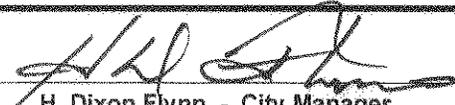
Funding Approval: 
Vicky McAthie, Finance Director


Alan N. Vallow
Electric Utility Director

PREPARED BY: Boris Prokop, Power Supply & Rates Manager

ANV/BP/lst

C: City Attorney
Finance Director

APPROVED: 

H. Dixon Flynn - City Manager

MEMBER AGREEMENT (SECOND PHASE) FOR
FINANCING OF PLANNING AND DEVELOPMENT ACTIVITIES
OF
HYDROELECTRIC PROJECT NUMBER TWO
THE POE HYDROELECTRIC PROJECT

This Agreement, by and between Northern California Power Agency, a joint powers agency of the State of California, hereinafter called "NCPA" and its members who execute this Agreement, hereinafter called "Project Members,"

WITNESSETH:

WHEREAS, NCPA and the Project Members are interested in developing additional power generation resources for the benefit of the residential, commercial, and industrial customers of the Project Members; and

WHEREAS, NCPA and the Project Members have evaluated the potential for obtaining a license for the Poe Hydroelectric Project (Project) from the Federal Energy Regulatory Commission (FERC) through a competing license application in competition with the license application of Pacific Gas and Electric Company; and

WHEREAS, in furtherance of the Project, NCPA has filed with FERC its Notice of Intent to file a timely license application under the Federal Power Act; and

WHEREAS, the City of Fremont has expressed an interest in joining with NCPA in a single competing license application, and both the City of Fremont

and NCPA wish to seek authorization to make the County of Butte a co-licensee with them, if NCPA and the City of Fremont, or either of them, are issued a license for the Poe Project; and

WHEREAS, the City of Fremont and the County of Butte wish to share the costs and benefits with NCPA of pursuing and securing a license for the Poe Project and to have NCPA provide project management; and

WHEREAS, the September 22, 1993 Facilities Agreement provides for a second stage of project planning and design pursuant to a Second Phase Agreement, as had been provided in the Member Service Agreement; and

WHEREAS, the second phase consists of all work performed after one or more participants has signed an agreement with NCPA for project study, design, or development before a Third Phase Agreement becomes effective for the financing, construction, operation, maintenance and rights to the output of an NCPA project; and

WHEREAS, to advance the investigation of the Project and further provide working capital for the study, design, and development of the Project, to include changes and improvements to the Project to better enhance the public interest factors under the Federal Power Act, and the licensing and permitting of the Project, as well as managing pursuit of the Project pursuant to a cost-sharing agreement with other parties, and litigating the defense of NCPA's competing license position, NCPA and the Project Members are entering into this Second Phase Agreement;

NOW THEREFORE, the parties hereto agree as follows:

Section 1. Obligations Formalized - Percentage Participation - Collections and Accounting. NCPA, on behalf of itself and the Project Members, shall

prosecute a competing license application for the Project, alone or in conjunction with others, as provided in this Agreement. Each Project Member agrees to continue to pay or advance to NCPA, from its electric department net revenues (after the payment of operating expenses) only, its percentage participation share of the costs authorized by Project Members in accordance with this Agreement in connection with the Project prior to the issuance of a license by the FERC to NCPA or NCPA and Fremont, or the first issuance of Project bonds. Each Project Member further agrees that it will fix the rates and charges for services provided by its electric department so that it will at all times have sufficient money in its electric department revenue funds to meet this obligation. The percentage participation of each Project Member is initially established as follows:

Alameda	5.3218
Biggs	0.2570
Gridley	0.5229
Healdsburg	1.1915
Lodi	7.5738
Lompoc	1.9351
Palo Alto	14.2520
Plumas-Sierra R.E.C.	1.8306
Port of Oakland	0.6889
Redding	12.8804
Roseville	16.0598
Santa Clara	33.5810
Truckee Donner Public Utility District	2.0216
Ukiah	<u>1.8835</u>
	100.0000%

The percentage participation share of each Project Member shall be revised proportionately if less than all NCPA members become Project Members on the effective date hereof, and thereafter if and when any Project Member withdraws in whole or in part. Any Project Member wholly withdrawing shall thereupon cease to be a Project Member for all purposes except for purposes of Sections 4 and 7(c).

After the expenditure of the \$750,000 heretofore appropriated for licensing activities in the Annual Budget for Fiscal Year 2003-2004, NCPA shall demand from each Project Member its share of its agreed to financial commitment on a concurrent basis. Any part of such demand by NCPA which remains unpaid for sixty days after its billing date shall bear interest from such sixtieth day at the prime rate of the Bank of America then in effect computed on a daily basis plus two percent until paid. Interest so earned shall not change any Project Member's participation percentage, and shall become a part of the working capital account defined below.

The funds advanced according to this Section 1 shall be used to establish a working capital account when approved by the Project Members, and in an amount and subject to any limitations approved by the Project Members.

Nothing in this Section 1 shall be construed to prohibit a Project Member from satisfying its financial commitments from unencumbered funds otherwise on deposit at NCPA.

Section 2. Limited Rights to Participate in Final Implementation and Financing.

(a) Discretion - Disposition of Power. In consideration of the payments provided for in Section 1 hereof, each Project Member who has not

wholly withdrawn, or who is not then in default, shall have an exclusive option to enter into a Third Phase Agreement for all or a part of its participation percentage of all power made available to NCPA from the Project.

(b) Increase in Purchases. A Project Member can, at the time of entering into the Third Phase Agreement, purchase more than its participation percentage of Project power if additional power is available by reason of the non-participation in the Third Phase Agreement by one or more Project Members. Such excess power shall be reallocated among those who do participate in the same proportion as their shares bear to the total shares of those who do participate. If Project Members so entitled do not wish to contract for all the excess power, such remaining excess shall be disposed of as agreed to by the Project Members.

(c) Exercise and Effect of Taking Less Than Full Entitlement. The Project Members shall establish the terms and provisions of an agreement to purchase power of the Project prior to the expiration of this Agreement, to be known as the Third Phase Agreement. They shall also establish the date by which the Third Phase Agreement must be executed by Project Members and delivered to NCPA if they are to participate in the purchase of power from the Project. Failure to execute the Third Phase Agreement for any of its total participation share and to deliver it to NCPA by that date or 30 days after Project Member receipt, whichever is later, will be an irrevocable decision on the part of that Project Member not to purchase any such power or otherwise participate in the Project. Execution and delivery of the Third Phase Agreement for less than its original total participation percentage, and delivery of that Project Member executed agreement to NCPA by the date established or 30 days after Project Member's receipt, whichever is later, will likewise be an irrevocable decision on the part of that Project Member not to purchase any such power in excess of the

share set forth in its delivered agreement. Supplemental agreements or other agreements will be entered into for the excess or surplus power. The procedure for processing supplemental agreements shall be consistent with those prescribed immediately above in this subsection (c) for making purchases of power. Failure to return an executed agreement for any additional power within the prescribed period is an irrevocable decision not to purchase such additional power. The Project Member making any herein defined irrevocable decision not to purchase all of its original share of power shall be foreclosed from receiving, and shall be relieved of further burdens related to, power which it has declined to purchase or further expense relative to the future development of the Project.

Section 3. Member Direction and Review. NCPA shall comply with all lawful directions of the Project Members with respect to this Agreement, while not stayed or nullified, to the fullest extent authorized by law. Actions of Project Members, including giving above directions to NCPA, will be taken only at meetings of authorized representatives of Project Members duly called and held pursuant to the Ralph M. Brown Act. Ordinarily, voting by representatives of Project Members will be on a one member/one vote basis, with a majority vote required for action; however, upon request of a Project Member representative, the voting on an issue will be by percentage participation with a 65% or more favorable vote necessary to carry the action.

Any decision related to the Project taken by the favorable vote of representation of Project Members holding less than 65% of percentage participation can be reviewed and revised if a Project Member holding any participation percentage gives Notice of Intention to seek such review and revision to each other Project Member within 48 hours after receiving written notice of such action. If such Notice of Intention is so given, any action taken specified in the Notice of Intention shall be nullified, unless the NCPA

Commissioners of Project Members holding at least 65% of the total participation percentage then in effect vote in favor thereof at a regular or specially called meeting of Project Members. If the Notice of Intention concerned a failure to act, such action shall nevertheless be taken if NCPA Commissioners of Project Members holding at least 65% of the total Participation Percentage vote in favor thereof at a regular or specially called meeting of Project Members.

Section 4. Conditional Repayment to Members. All payments and advances made heretofore, and those hereafter made pursuant to Section 1, excluding interest paid on delinquent payments, shall be repaid to each of the Project Members making such payments and advances pursuant to this Agreement out of the proceeds of the first issuance of the Project bonds or as and when there are sufficient funds available from the partial sale of bonds. Such reimbursements shall be made within 60 days following the sale of any Project bonds. If NCPA is not successful in financing the Project, there shall be no reimbursement except out of unused Project funds along with all other receipts to which NCPA is entitled in connection with the Project.

Section 5. Term. This Agreement shall take effect on April 24, 2003, or whenever executed by NCPA members holding 85% of the initial percentage participation, whichever is later, and it shall not take effect at all if not in effect by June 30, 2003. This Agreement shall be superseded by the Third Phase Agreement into which Project Members shall enter any time prior to the issuance of the Project bonds, pursuant to Section 2, except that Section 4 shall remain in effect. Changes in this provision, except as to Section 4, shall be in accordance with Section 3 hereof.

Section 6. Financial Commitments. Each Project Member agrees to a total financial commitment for its respective percentage participation of a total sum,

including payments and advances heretofore made, up to \$2 million in costs allocable to NCPA as authorized and approved by Project Members.

From time to time as needs arise, representatives of Project Members may, by a favorable vote as provided in Section 3, authorize an increased financial commitment above \$2 million which can be shown to support the completion of the Project, but only after 30 days' written notice of such proposed increase has been given to all Project Members.

Section 7. Assignment.

(a) Notwithstanding any other provision of this Agreement, if NCPA shall require funds to carry out the terms of this Agreement prior to the receipt of adequate funds from the Project Members, it may assign its right to receive any payments under this Agreement to a bank or other financial institution to secure a borrowing by NCPA or in exchange for an amount of money equal to the then present value of those payments, as determined by NCPA. Project Members hereby consent to such assignment, and upon notification in writing by NCPA, each such Project Member will make each such assigned payment directly to the assignee. The assignee shall not be liable to Project Members for the amounts so assigned, and NCPA shall use the proceeds of such borrowing or assignment for the purposes provided into this Agreement.

If an assignment is made under this section, then upon the failure of any Project Member to make any payment so assigned, the percentage participant share of each non-defaulting Project Member shall be automatically increased for the term of the assignment pro rata with that of the other non-defaulting Project Members, and the defaulting Project Member's share shall (but only for purposes of computing the respective percentage participation shares of the non-defaulting Project Members) be reduced correspondingly; provided that the sum

of such increase for any non-defaulting Project Member shall not exceed without written consent of the non-defaulting Project Members an accumulated maximum of 25% of the non-defaulting Project Member's original percentage participation share.

If the Project Member shall fail or refuse to pay any amounts due to NCPA, the fact that other Project Members shall increase their obligations to make such payments shall not relieve the defaulting Project Member of its liability for such payments and any Project Member increasing such obligation shall have a right of recovery from the defaulting Project Member to the extent of such respective increase.

In addition, NCPA may terminate the provisions of this Agreement insofar as they entitle the defaulting Project Member to its percentage participation share of Project output.

(b) For the purposes of such assignment, NCPA may fix and schedule the total amount payable by each Project Member into any number of semi-annual payments, not less than four nor to exceed ten, and the dates on which such payments will be made, and each Project Member agrees to abide by such schedule. NCPA shall provide a reasonable opportunity for any Project Member to prepay its total obligation.

(c) After such an assignment is made, no Project Member may avoid the obligation so assigned by withdrawal pursuant to Section 7 hereof or otherwise.

Section 8. Withdrawal From Further Participation. If at any time following the execution of this Agreement, there is an increase in the financial commitment beyond that contemplated in Section 6, Project Members may

partially withdraw, i.e., from participation in the increase, or may withdraw wholly from the Project. Any withdrawal shall be subject to honoring any commitments made by them or on their behalf pursuant to authorization of this Agreement. To withdraw, such Project Members shall give NCPA written notice of such withdrawal, in part or in whole, within thirty (30) days of the receipt of the notice by them of the increase.

Section 9. Voting Rights and Duration. A Project Member is participating for purposes of Section 3 percentage voting until it completely withdraws, but a partial withdrawal will result in a reduction in its percentage participation share to the ratio of its payments after such withdrawal to the total amount of payments by all Project Members after such withdrawal. When the Third Phase Agreement is executed, or revised, revised participation percentages for voting shall be established by dividing the amount of power agreed to be purchased by each Project Member by the total amount of power to be purchased by all Project Members except that the 65% of percentage participation specified in Sections 3 and 9 shall be reduced by the amount that the percentage participation of any Project Member shall exceed 35%, but such 65% shall not be reduced below 50%.

Section 10. Quorum Defined. The presence of either a majority of the Project Members, or of Project Members then having a combined participation percentage of at least 65%, shall constitute a quorum for the purpose of action.

IN WITNESS WHEREOF, each Project Member has executed this Agreement with the approval of its governing body, and NCPA has authorized this Agreement in accordance with the authorization of its Commission.

NORTHERN CALIFORNIA
POWER AGENCY

By: _____

By: _____

CITY OF BIGGS

By: _____

By: _____

CITY OF HEALDSBURG

By: _____

By: _____

CITY OF LOMPOC

By: _____

By: _____

PLUMAS-SIERRA RURAL
ELECTRIC COOPERATIVE

By: _____

By: _____

CITY OF ROSEVILLE

By: _____

By: _____

CITY OF ALAMEDA

By: _____

By: _____

CITY OF GRIDLEY

By: _____

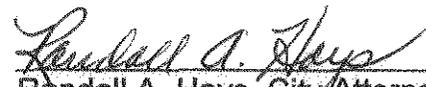
By: _____

CITY OF LODI

By: _____

H. Dixon Flynn, City Manager

Approved as to Form:



Randall A. Hays, City Attorney

Attest:

Susan Blackston, City Clerk

CITY OF PALO ALTO

By: _____

By: _____

CITY OF REDDING

By: _____

By: _____

CITY OF SANTA CLARA

By: _____

By: _____

CITY OF ROSEVILLE

By: _____

By: _____

CITY OF SANTA CLARA

By: _____

By: _____

TRUCKEE DONNER PUBLIC
UTILITY DISTRICT

By: _____

By: _____

CITY OF UKIAH

By: _____

By: _____

POE HYDROELECTRIC PROJECT

Project Location:	North Fork Feather River - near Pulga, CA.
Installed Capacity:	142.83 MW
Average Generation:	558 GWH (1999 – 2001)
Normal Max. Flow:	2310 cfs
Plant Type:	Run of River – limited storage
FERC License Issued:	Sept. 1953
License Expiration:	Sept. 2003
PG&E Book Value:	\$17 million
PG&E's estimate of the cost of power:	\$13.6/MWh
NCPA's estimate of the cost:	\$20.0/MWh

Re-license Application filing date by PG&E: **Sept. 30, 2001**

Re-license Application filed by PG&E: **October 2, 2001 (late – 2 days)**

PG&E sought to backdate Poe License date with FERC: **October 12, 2001**

NCPA Intervened-asked FERC to reject PG&E's motion: **November 19, 2001**

FERC denied PG&E' request, and opens up competitive license proceedings: **January 16, 2002**

NCPA Appealed FERC's Order to grant preference to PG&E in the 9th Circuit Court: **June 2002**

Revised FERC Application filing date: **January 2004**

MOU execution date (expected): **March 2003**

Initial Consultation Package to be mailed to the Resource agencies, and public: **March 2003**

NCPA, Fremont and Butte County have agreed to file a joint application.

NCPA to have 50%, and Fremont and Butte each to have 25% shares in the Project.

Total cost of licensing is expected to be around \$1.25 million of which NCPA's share would be \$625,000.

Decision by the 9th Circuit Court is not expected until late 2003, however, we can not delay filing of the license application.

Camp, Dresser & McKee (CDM) will act as the parties licensing engineer.

NCPA has approved a budget of \$750,000 (FY2003-2004) for new generation development and the Commission has authorized the staff to utilize the funds to support the licensing activities.

RESOLUTION NO. 2003-84

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE THE CITY
OF LODI LETTER MEMBER AGREEMENT (SECOND PHASE)
FOR FINANCING OF PLANNING AND DEVELOPMENT
ACTIVITIES OF HYDROELECTRIC PROJECT NO. TWO, THE
POE HYDROELECTRIC PROJECT BETWEEN NORTHERN
CALIFORNIA POWER AGENCY AND THE CITY OF LODI

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NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute the City of Lodi Letter Member Agreement (Second Phase) for Financing of Planning and Development Activities of Hydroelectric Project No. Two, the Poe Hydroelectric Project between Northern California Power Agency and the City of Lodi.

Dated: May 7, 2003

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I hereby certify that Resolution No. 2003-84 was passed and adopted by the Lodi City Council in a regular meeting held May 7, 2003, by the following vote:

- AYES: COUNCIL MEMBERS – Beckman, Hansen, Howard, Land, and Mayor Hitchcock
- NOES: COUNCIL MEMBERS – None
- ABSENT: COUNCIL MEMBERS – None
- ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk