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CITY COUNCIL MEETING  
AUGUST 17, 1983

RES. 83-91

On motion of Council Member Reid, Snider second, Council adopted Resolution No. 83-91 approving the Agreement for Financing of Planning and Development Activities for Construction of Combustion Turbine Generating Facilities (Second Phase) and authorized the Mayor and City Clerk to execute the document on behalf of the City.

*Page 8*

The following items pertaining to NCPA were introduced by City Manager Glaven. The items were then reviewed by Mr. Dave Curry, Utility Director for the City of Lodi who responded to questions as were posed by the City Council. Each of these items was also reviewed in depth at an earlier Informal Informational Meeting.

**NCPA GEOTHERMAL  
PROJECT NO. 3  
THIRD PHASE  
AGREEMENT**

a) Agenda Item K-2 - Approve NCPA Geothermal Project No. 3 Third Phase Agreement.

**TRANSMISSION  
PROJECT THIRD  
PHASE AGREEMENT**

b) Agenda Item K-3 - Approval of Transmission Project Third Phase Agreement.

**AGREEMENT FOR  
FINANCING OF  
PLANNING AND  
DEVELOPMENT  
ACTIVITIES FOR  
CONSTRUCTION OF  
COMBUSTION TURBINE  
GENERATING  
FACILITIES**

c) Agenda Item K-4 - Approval of Agreement for Financing of Planning and Development Activities for construction of Combustion Turbine Generating Facilities (Second Phase)

A lengthy discussion regarding each item followed with questions being directed to Staff.

**ORD. NO. 1294  
INTRODUCED**

Council Member Reid then moved for introduction of Ordinance No. 1294 approving the terms and conditions of a Member Agreement between Northern California Power Agency and certain participating members and authorizing the execution of and delivery of said Agreement by Officers of the City of Lodi. NCPA Geothermal Project No. 3 - Third Phase Agreement. Further, Council amended the City's percentage participation to 6%. The motion was seconded by Mayor Pro Tempore Snider and carried by the following vote:

Ayes: Council Members - Murphy, Reid, Snider, and Olson (Mayor)

Noes: Council Members - Pinkerton

Absent: Council Members - None

**ORD. NO. 1295  
INTRODUCED**

Council Member Reid then moved for introduction of Ordinance No. 1295 approving the terms and conditions of a Member Agreement between Northern California Power Agency and certain participating members and authorizing the execution of and delivery of said Agreement by Officers of the City - Agreement for Construction, Operation, and Financing of Transmission project Number One. The motion was seconded by Mayor Pro Tempore Snider, and carried by the following vote:

Ayes: Council Members - Murphy, Reid, Snider, and Olson (Mayor)

Noes: Council Members - Pinkerton

Absent: Council Members - None

CITY COUNCIL

EVELYN M. OLSON, Mayor  
JOHN R. (Randy) SNIDER  
Mayor Pro Tempore  
ROBERT G. MURPHY  
JAMES W. PINKERTON, Jr.  
FRED M. REID

CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
POST OFFICE BOX 320  
LODI, CALIFORNIA 95241  
(209) 334-5634

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HENRY A. CLAVES, Jr.  
City Manager  
ALICE M. REIMCHE  
City Clerk  
RONALD M. STEIN  
City Attorney

August 22, 1983

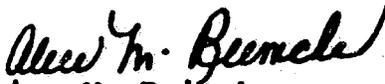
Ms. Gail Sipple  
Executive Assistant  
NCPA  
8421 Auburn Blvd.  
Suite 160  
Citrus Heights, CA 95610

Subject: Combustion Turbine Generating Facilities -  
Second Phase Agreement

Enclosed herewith please find executed copy of the above referenced Agreement which was approved by the Lodi City Council at its regular meeting of August 17, 1983 together with a certified copy of the authorizing resolution.

Please return a fully executed copy of the subject agreement at your earliest convenience.

Very truly yours,

  
Alice M. Reimche  
City Clerk

AMR:jj  
Enc.

RESOLUTION NO. 83-91

RESOLUTION APPROVING THE AGREEMENT FOR  
FINANCING OF PLANNING AND DEVELOPMENT  
ACTIVITIES FOR CONSTRUCTION OF COMBTUSION  
TURBINE GENERATING FACILITIES

RESOLVED that the City Council of the City of Lodi does hereby approve the Agreement for Financing of Planning and Development Activities for construction of Combustion Turbine Generating Facilities a copy of which is attached hereto, marked Exhibit "A" and thereby made a part hereof.

BE IT FURTHER RESOLVED that the City Council of the City of Lodi does hereby authorize the Mayor and City Clerk to execute the subject agreement on behalf of the City.

Dated: August 17, 1983

I hereby certify that Resolution No. 83-91 was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 17, 1983 by the following vote:

Ayes: Council Members - Murphy, Raid, Snider,  
and Olson (Mayor)

Noes: Council Members - Pinkerton

Absent: Council Members - None

  
Alice M. Reimche  
City Clerk

K2

RESOLUTION NO. 83- 56  
NORTHERN CALIFORNIA POWER AGENCY

BE IT RESOLVED BY THE COMMISSION OF THE NORTHERN CALIFORNIA POWER AGENCY,  
as follows:

Section 1. The form of "Agreement for Construction, Operation and Financing of Geothermal Generating Project Number Three", designated July 28, 1983, a Third Phase Agreement under the Member Services Agreements, is hereby approved; and the Assistant Secretary is directed to send copies of the same to the Project Participants named therein, and request that it be approved and executed by ordinance in accordance with the terms of Section 13 thereof.

Section 2. The General Manager is authorized to execute said agreement on behalf of this Agency.

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
City of - Alameda	<u>Agree</u>	_____	_____
Biggs	_____	_____	<u>X</u>
Gridley	<u>Agree</u>	_____	_____
Healdsburg	_____	_____	<u>X</u>
Lodi	<u>Agree</u>	_____	_____
Lompoc	<u>Agree</u>	_____	_____
Palo Alto	<u>Agree</u>	_____	_____
Redding	_____	<u>X</u>	_____
Roseville	<u>Agree</u>	_____	_____
Santa Clara	<u>Agree</u>	_____	_____
Ukiah	<u>Agree</u>	_____	_____
Plumas-Sierra	<u>Agree</u>	_____	_____

ADOPTED AND APPROVED this 28<sup>th</sup> day of July, 1983.

K2

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF \_\_\_\_\_, CALIFORNIA, APPROVING THE TERMS AND CONDITIONS OF A MEMBER AGREEMENT BETWEEN NORTHERN CALIFORNIA POWER AGENCY AND CERTAIN PARTICIPATING MEMBERS AND AUTHORIZING THE EXECUTION OF AN DELIVERY OF SAID AGREEMENT BY OFFICERS OF THE CITY OF \_\_\_\_\_.

WHEREAS, pursuant to the provisions of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, as amended (the "Joint Powers Act"), the City of \_\_\_\_\_ (the "City") and certain other public agencies created pursuant to the laws of the State of California (collectively, the "Members"), have entered into a Joint Powers Agreement (the "Agreement") creating the Northern California Power Agency (the "Agency"), a public entity separate and apart from the Members; and

WHEREAS, in accordance with the Agreement and the Joint Powers Agreement the Agency proposes to acquire and construct or cause to be acquired and constructed and to operate or cause to be operated a project (the "Project") consisting of (i) two 55-megawatt geothermal generating units, and related facilities, including transmission facilities to the generating tie, in the State of California, and all rights, properties and improvements necessary therefor, including fuel and water facilities and resources, and capital improvements thereto that may be constructed from time to time, and interests in certain other property and rights relating thereto, including a headquarters facility for use by the Agency in connection with the Project; (ii) Project No. 2, subject to the rights of the participants therein; and (iii) the refinancing of certain Development Fund expenditures; and

WHEREAS, the City has need for an economical, reliable source of electric power and energy to meet the demands of the customers of its electric system, and, as such

WHEREAS, this City Council finds and determines that it is in the best interests of the customers of the electric system of the City for the City to enter into the Agreement for construction, operation and financing of Geothermal Generating Project Number 3 (the "Member Agreement") in substantially the form submitted to this City Council and dated for convenience as of July 1, 1983;

WHEREAS, this City Council finds and determines that it is in the best interests of the customers of the electric system of the City for the City to purchase electric capacity and energy of the Project from the Agency;

WHEREAS, payments by the City pursuant to the Member Agreement will be used in part by the Agency for payment of principal

K2

of and interest on its bonds, notes or other evidences of indebtedness issued in connection with the construction, operation and financing of the Project;

NOW, THEREFORE, the City Council of the City of \_\_\_\_\_ does ordain as follows:

1. The City Council hereby finds and determines that the terms and conditions of the Member Agreement (including the East Block Entitlement Percentage and the Project Entitlement Percentage of the City set forth in Appendix A thereto) in substantially the form submitted to this City Council be, and the same are hereby, approved.

2. The East Block Entitlement Percentage of the City as set forth in Appendix A to said Member Agreement may be increased to such percentage, not be exceed \_\_\_\_\_ percent (\_\_\_\_%), as shall be determined by the \_\_\_\_\_ of the City.

3. The Project Entitlement Percentage of the City as set forth in Appendix A to said Member Agreement may be increased to such percentage, not be exceed \_\_\_\_\_ percent (\_\_\_\_%), as shall be determined by the \_\_\_\_\_ of the City.

4. The City is hereby authorized to enter into the Member Agreement and the \_\_\_\_\_ and the \_\_\_\_\_ are hereby authorized to execute and deliver the Member Agreement by and on behalf of the City.

5. Pursuant to Section 54241 of the Government Code of the State of California, this Ordinance is subject to the provisions for referendum applicable to the City.

6. The City Clerk shall certify to the enactment of this Ordinance and shall cause this Ordinance to be published in accordance with Section 54242 of the Government Code of the State of California.

7. Thirty (30) days from and after its enactment, this Ordinance shall take effect and be in full force, in the manner provided by law.

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

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

(e) NCPA shall not sell such transmission service, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, which would result in any of the Bonds being treated as an obligation not described in Section 103(a) of the Internal Revenue Code of 1954, as amended, by reason of classification of such Bond as an "industrial development bond" within the meaning of Section 103(b) of said Code.

10. Insurance and Indemnification. NCPA shall obtain or cause to be obtained insurance for the Project covering such risks (including earthquakes), 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 personal 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, provided, however, that such liability of NCPA shall be limited to the extent the proceeds of insurance and other moneys available to NCPA hereunder are available therefore.

11. 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 or other laws applicable to such meetings, in effect from time to time.

(a) A quorum of the Commission of NCPA for purposes of acting upon matters related to the Project shall consist of those Commissioners (including for all purposes of this Section 11, their designated alternates), representing a numerical majority of the Project Participants, or, in the absence of such, representing Project Participants having a combined Transmission Service Share of at least a majority in interest at such time.

(15)

(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 or other laws applicable to such meetings, in effect from time to time.

(c) At regular or special meetings of the Commission, voting on matters relating to the Project shall be by Transmission Service Share, and the affirmative vote of a majority in interest at such time 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.

(d) Notwithstanding subsection (c) of this Section 11, upon demand of any Commissioner of any Project Participant, at any meeting of the Commission other than a special meeting referred to in subsection (b) of this Section 11, the vote on any issue relating to the Project shall be by Transmission Service Share at such time and 65% or greater affirmative vote shall be required to take action.

(e) Any Project Participant may veto a discretionary action of the Project Participants relating to the Project that was not taken by a 65% or greater Transmission Service Share vote within 10 days following mailing of notice of such Commissioners' action, by giving written notice of veto to NCPA, unless at a meeting of Commissioners or alternates of Project Participants called for the purpose of considering the veto and held within 30 days after such veto notice, the holders at such time of 65% or greater of the Transmission Service Share shall vote to override the veto.

(f) The sixty-five percent of the Transmission Service Share specified in this Section 11 shall be reduced by the amount that the Transmission Service Share of any Project Participant shall exceed 35% at such time, but such 65% shall not be reduced below a majority in interest.

12. Term. (a) This Agreement shall not take effect until it and/or any supplement to it provided for in Section 2(c) of the Second Phase Agreement has been duly executed and delivered to NCPA by Project Participants the Transmission Service Shares of which, in the aggregate, equal 100%, all in accordance with Section 2(c) of the Second Phase Agreement and accompanied by an opinion for each Project Participant of an attorney or firm of attorneys in substantially the form attached hereto as Appendix B, and by evidence satisfactory to NCPA of compliance by such Project Participant with Section 5C of "Amended and Restated Member Agreement for Construction, Operation and Financing of NCPA Geothermal Generating Unit #2 Project," made as of January 1, 1980 by NCPA and Purchasing Participating Members and in compliance with any other

K9

similar requirements of other agreements between NCPA and such Project Participant.

(b) Notwithstanding the delay in effective date of this Agreement until the Transmission Service Shares in the aggregate equal 100% and the other provisions of Section 12(a) hereof have been complied with, it is agreed by all signatories hereto that in consideration for NCPA's signature hereto, and for its commitment to use its best efforts to obtain the commitment for Transmission Service Shares in the aggregate equal to 100%, each Project Participant upon its execution and delivery of this Agreement to NCPA along with required opinion and any required evidence of compliance as required by Section 12(a) hereof shall be immediately bound not to withdraw its respective offer herein made to enter into this Agreement as executed and/or supplemented or to decrease or terminate its Transmission Service Share before January 1, 1984. Such a decrease or termination by a Project Participant may be made only if this Agreement has not taken effect before January 1, 1984 and only by giving written notice thereof to NCPA between January 1, and January 15, 1984.

(c) Notwithstanding the foregoing, each Project Participant shall be entitled to decrease or terminate its Transmission Service Share upon giving written notice thereof to NCPA within fifteen (15) days after January 1, 1986, if by January 1, 1986 NCPA shall not have issued any Bonds secured by this Agreement.

(d) The term of this Agreement shall continue until the later of (i) the expiration of the useful life of the Project, or (ii) the date on which all Bonds issued have been retired, or full provisions made for their retirement, including interest until their retirement date; provided, however, that in no event shall the term of this Agreement extend beyond the date of termination of NCPA. In the event of the termination of the existence of NCPA it is the intent of the Project Participants that the Agreement be construed as an Agreement among the Project Participants.

13. Termination and Amendments. This Agreement shall not be subject to termination by any party under any circumstances, whether based upon the default of any other party under this Agreement, or any other instrument, or otherwise, except as specifically provided herein.

Except as otherwise provided in this Agreement, so long as any Bonds are outstanding and unpaid and funds are not set aside for the payment or retirement thereof in accordance with the applicable Bond Resolution, this Agreement shall not be amended, modified or otherwise changed or rescinded by agreement of the parties without the consent of each Trustee for Bonds whose consent is required under the applicable Bond Resolution.

K2

14. **Member Service Agreement.** This Agreement is a service schedule and a third phase agreement attached to and incorporated into the Member Service Agreement. This Agreement shall be construed as the more specific terms governing the general relationship between the parties set out in the Member Service Agreement in connection with the Project.

15. **Second Phase Agreement.** The Second Phase Agreement is superseded by this Agreement, except that section 4 thereof shall remain in effect as provided by section 5 of the Second Phase Agreement unless changed by formal action of all of the Project Participants. Said section 4 is as follows:

"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 entities 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 and shall include interest computed monthly at a rate equivalent to the end of the month prime rate of the Bank of America NT&SA. Any interest due under the third paragraph of section 1 of this Agreement and unpaid shall be deducted from the repayments. If NCPA determines to construct transmission facilities, but is not successful in obtaining approval therefor from the California Energy Commission (CEC), there shall be no reimbursement except out of unused Project funds including those then in the Working Capital and Contingency Fund account along with all other receipts to which NCPA is entitled in connection with the Project."

16. **Miscellaneous.** The headings of the sections hereof are inserted for convenience only and shall not be deemed a part of this Agreement.

If any one or more of the covenants or agreements provided in this Agreement to be performed should be determined to be invalid or contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

K2

IN WITNESS WHEREOF each Project Participant has executed this Agreement with the approval of its governing body, and caused its official seal to be affixed and NCPA has executed this Agreement in accordance with the authorization of its Commission.

NORTHERN CALIFORNIA POWER AGENCY

By \_\_\_\_\_  
And \_\_\_\_\_

CITY OF ALAMEDA

By \_\_\_\_\_  
And \_\_\_\_\_

CITY OF BIGGS

By \_\_\_\_\_  
And \_\_\_\_\_

CITY OF GRIDLEY

By \_\_\_\_\_  
And \_\_\_\_\_

HEALDSBURG

By \_\_\_\_\_  
And \_\_\_\_\_

CITY OF LODI

By \_\_\_\_\_  
And \_\_\_\_\_

CITY OF LOMPOC

By \_\_\_\_\_  
and \_\_\_\_\_

CITY OF PALO ALTO

By \_\_\_\_\_  
and \_\_\_\_\_

CITY OF ROSEVILLE

By \_\_\_\_\_  
and \_\_\_\_\_

CITY OF UKIAH

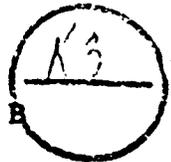
By \_\_\_\_\_  
and \_\_\_\_\_

PLUMAS-SIERRA RURAL ELECTRIC COOPERATIVE

By \_\_\_\_\_  
and \_\_\_\_\_

SCHEDULE OF PROJECT PARTICIPANTS  
AND TRANSMISSION SERVICE SHARES

<u>Project Participant</u>	<u>Transmission Service Share</u>
City of Alameda	30.3590%
City of Biggs	.4082
City of Gridley	.7103
City of Healdsburg	6.6068
City of Lodi	21.3255
City of Lompoc	6.6194
City of Palo Alto	8.2342
City of Roseville	14.1756
City of Ukiah	10.0963
Plumas-Sierra Rural Electric Cooperative	<u>1.4657</u>
Total	100.000%



## FORM OF OPINION OF COUNSEL

Northern California Power Agency  
8421 Auburn Boulevard  
Suite 160  
Citrus Heights, California 95610

Dear Sirs:

I am acting as counsel to the \_\_\_\_\_ (the "Project Participant") under the Agreement for Construction, Operation and Financing of the Transmission Project dated as of July 1, 1983 (the "Agreement") among the Project Participant, the Northern California Power Agency (the "Agency") and certain other entities (the "Project Participants"), and I have acted as counsel to the Project Participant in connection with the matters referred to herein. As such counsel I have examined and am familiar with (i) those documents relating to the existence, organization and operation of the Project Participant, (ii) all necessary documentation of the Project Participant relating to the authorization, execution and delivery of the Agreement and (iii) an executed counterpart of the Agreement.

Based upon the foregoing and such examination of law and such other information, papers and documents as I deem necessary or advisable to enable me to render this opinion, including the Constitution and laws of the State of California together with the charter, other governing instruments, ordinances and public proceedings of the Project Participant, I am of the opinion that:

1. The Project Participant is [state form of organization] \_\_\_\_\_, duly created, organized and existing under the laws of the State of California and duly qualified to furnish electric service within said State.

2. The Project Participant has full legal right, power and authority to enter into the Agreement and to carry out and consummate all transactions contemplated thereby, and the Project Participant has complied with the provisions of applicable law in all matters relating to such transactions.

3. The Agreement has been duly authorized, executed and delivered by the Project Participant, is in full force

K2

and effect as to the Project Participant in accordance with its terms assuming the other Project Participants have complied with the requirements of Section 12(a) of such Agreement and, assuming that the Agency has all the requisite power and authority, and has taken all necessary action, to execute and deliver such Agreement, constitutes the legal, valid and binding obligation of the Project Participant enforceable in accordance with its terms.

4. Payments by the Project Participant under the Agreement will constitute an operating expense of the Project Participant and are to be made solely from the Revenues of its Electric System as provided in Section 5(c) of the Agreement.

5. No approval, consent or authorization of any governmental or public agency, authority or person is required for the execution and delivery by the Project Participant of the Agreement, or the performance by the Project Participant of its obligations thereunder.

6. The authorization, execution and delivery of the Agreement and compliance with the provisions thereof will not conflict with or constitute a breach of, or default under, any instrument relating to the organization, existence or operation of the Project Participant, any commitment, agreement or other instrument to which the Project Participant is a party or by which it or its property is bound or affected, or any ruling, regulation, ordinance, judgment, order or decree to which the Project Participant (or any of its officers in their respective capacities as such) is subject or any provision of the laws of the State of California relating to the Project Participant and its affairs.

7. There is no action, suit, proceeding, inquiry or investigation at law or in equity, or before any court, public board or body, pending or, to my knowledge, threatened against or affecting the Project Participant or any entity affiliated with the Project Participant or any of its officers in their respective capacities as such (nor to the best of my knowledge is there any basis therefor), which questions the powers of the Project Participant referred to in paragraph 2 above or the validity of the proceedings taken by the Project Participant in connection with the authorization, execution or delivery of the Agreement, or wherein any unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by the Agreement, or which, in any way, would adversely affect the validity or enforceability of the Agreement.

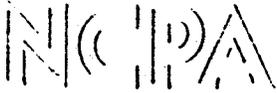
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The opinion expressed in paragraph 3 above is qualified to the extent that the Agreement enforceability of the may be limited by any applicable bankruptcy, insolvency, debt adjustment, moratorium, reorganization, or other similar laws affecting creditors' rights generally or as to the availability of any particular remedy.

This opinion is rendered only with respect to the laws of the State of California and the United States of America, and is addressed only to the Agency. No other person is entitled to rely on this opinion, nor may you rely on it in connection with any transactions other than those described herein.

[Note: Where it shall be necessary for the Project Participant to obtain the authorization or approval of a Federal, state or local regulatory authority relating to such Project Participant's performance under the Agreement, the form of opinions set forth in paragraphs 2, 3 and 5 hereof may be appropriately adjusted to reflect the necessity for such authorization or approval and paragraph 4 hereof shall be adjusted to include therein an exception thereto specifically describing the requisite authorization or approval and stating that it has been duly given or obtained and is in full force and effect.]

Very truly yours,



# Northern California Power Agency

8421 Auburn Boulevard, Suite 160 Citrus Heights, California 95610

**ROBERT E. GRIMSHAW**  
General Manager  
(916) 722-7815

August 2, 1983



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ALICE M. RENICHE  
CITY CLERK  
CITY OF LOSI

TO: Participants in the Combustion Turbine Generating Facilities  
FROM: Gail Sipple  
SUBJECT: Second Phase Agreement

Pursuant to the Commission meeting of July 28, 1983, enclosed is the Agreement for Financing of Planning and Development Activities for Construction of Combustion Turbine Generating Facilities (Second Phase), to be presented to your governing body for approval.

Although Resolution No. 83-48 (attached) requests that the agreement be approved by resolution on or before August 29, 1983, the agreement itself requests approval on or before September 1, 1983, which is the correct date to follow. Resolution No. 83-48 will be amended at the next Commission meeting to reflect the September 1, 1983 date.

Upon approval, please return to me a signed copy of the agreement along with your resolution authorizing its approval.

By copy of this letter, I am also forwarding this document to your City Clerk for processing.

If you have any questions, please contact me or Dennis Dudzik.

Yours truly,

GAIL SIPPLE  
Executive Assistant

Enc.



RESOLUTION NO. 83-48  
NORTHERN CALIFORNIA POWER AGENCY

BE IT RESOLVED BY THE COMMISSION OF THE NORTHERN CALIFORNIA POWER AGENCY,  
as follows:

Section 1. The form of "Agreement for Financing of Planning and Development Activities for Construction of Combustion Turbine Generating Facilities" presented to this meeting is hereby approved.

Section 2. The General Manager is authorized and directed to transmit such Agreement to the members with a request that they authorize its execution by resolution on or before August 29, 1983.

Section 3. Subject to the execution of the agreement, the General Manager is hereby authorized and directed to enter into a contract with EBASCO Services, Inc. under the general terms of EBASCO's proposal (dated July 20, 1983). The total amount payable under the agreement for such services shall not exceed \$46,500, without further authorization of this Commission.

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
City of - Alameda	<u>aye</u>	_____	_____
Biggs	_____	_____	<u>X</u>
Gridley	_____	<u>X</u>	_____
Healdsburg	<u>aye</u>	_____	_____
Lodi	<u>aye</u>	_____	_____
Lompoc	<u>aye</u>	_____	_____
Palo Alto	_____	<u>X</u>	_____
Redding	_____	<u>X</u>	_____
Roseville	<u>aye</u>	_____	_____
Santa Clara	_____	<u>X</u>	_____
Ukiah	<u>aye</u>	_____	_____
Plumas-Sierra	<u>aye</u>	_____	_____

ADOPTED AND APPROVED this 28th day of July, 1983.



AGREEMENT  
FOR  
FINANCING OF PLANNING AND DEVELOPMENT ACTIVITIES  
FOR CONSTRUCTION OF COMBUSTION TURBINE GENERATING FACILITIES

This Agreement dated as of August 1, 1983, 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 "Project Members", witnesseth:

WHEREAS, NCPA's 1983-2002 System Integration Plan has identified the need for peaking capacity to offset certain period peaking and reserve capacity which will be purchased from others, and has indicated that by early installation of combustion turbines, some \$17 million of economic benefits may be realized; and

WHEREAS, NCPA and the Project Members desire to investigate the cost and feasibility of installing such combustion turbines, and

WHEREAS, the cost of such investigation of installing such combustion turbine facilities (hereinafter referred to as the "Project") is estimated to be \$550,000.00; and

WHEREAS, the Project Members desire to enter into a second phase agreement pursuant to the Member Service Agreements dated February 12, 1981, in order to formalize their understanding regarding sharing of the benefits and burdens associated with their participation in the Project;

K4

NOW THEREFORE, the parties hereto agree as follows:

Section 1. Obligation Formalized-Percentage Participation Collection and Documentation. Each Project Member hereby agrees to continue to pay or advance to NCPA, from its electric department revenues only, its percentage share of the costs authorized by Project Members in accordance with this Agreement in connection with its participation in the Project. 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 NCPA member which has tentatively determined to be a Project Member is initially established as follows:

Alameda	
Biggs	
Gridley	
Lodi	
Healdsburg	
Lompoc	
Palo Alto	
Redding	
Roseville	
Santa Clara	
Ukiah	
Plumas-Sierra R.E.C.	
Total	100.00%

The above participation percentages shall be revised proportionately if less than all of the above NCPA members become Project Members, 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 Section 4.



Hereafter, 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 NT&SA 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 fund defined below.

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

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

(a) Discretion - Disposition of Combustion Turbine Capacity. 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 combustion turbine capacity for use by NCPA members pursuant to this Agreement.

(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 the Project capacity

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if additional capacity is available by reason of the non-participation in the Third Phase Agreement by one or more Project Members. Such excess capacity 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 capacity, 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 combustion turbine capacity 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 capacity 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 member receipt, whichever is later, will be an irrevocable decision on part of that Project Member not to purchase any such capacity. Execution and delivery of the Third Phase Agreement for less than its 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 combustion turbine capacity 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 capacity. The procedure for processing supplemental agreements shall be consistent with those prescribed immediately above in this subsection (c) for making purchases of capacity. Failure to return an executed agreement for any additional combustion turbine capacity within the prescribed period is an irrevocable decision not to purchase such additional capacity. The Project Member making any herein defined irrevocable decision not to purchase all of its share of combustion turbine capacity shall be foreclosed from utilizing, and shall be relieved of further burdens related to, capacity which it has declined to purchase.

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 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 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 entities 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 partial sale of bonds. Such reimbursements shall be made within 60 days following the sale of any Project bonds and shall include interest computed monthly at a rate equivalent to the end of the month prime rate of the

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Bank of America NT&SA. Any interest due under the third paragraph of Section 1 of this Agreement and unpaid shall be deducted from the repayment. If NCPA determines to construct combustion turbine facilities, but is not successful in obtaining all necessary approvals and financing therefor, there shall be no reimbursement except out of unused Project funds including those then in the Working Capital and Contingency Fund account, along with all other receipts to which NCPA is entitled in connection with the Project.

Section 5. Term. This Agreement shall take effect on August 1, 1983, but only if approved by NCPA members holding 85% of the initial percentage participation prior to September 1, 1983 and executed by such members prior to September 15, 1983. This Agreement shall not be binding upon Plumas-Sierra Rural Electric Cooperative until approved in writing by the Administrator of the Rural Electrification Administration. This Agreement shall be superseded by the Third Phase Agreement, except that Section 4 shall remain in effect. Changes may be made in this Section 5, except as to the continued effectiveness of Section 4, 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 of \$56,500 principal amount plus interest thereon, if any, including payments and advances heretofore made, 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 increase in NCPA's financial commitment 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 6A. 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 as assigned, and NCPA shall use the proceeds of such borrowing or assignment for the purposes provided in 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 Participation 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 Percentage

21

Participation shall (but only for purposes of computing the respective Percentage Participation 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.

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 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.

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(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.

(d) If NCPA makes an assignment pursuant to this section, it may transfer any or all of its rights and duties to a nonprofit corporation formed to act on behalf of NCPA if the voting power of the members of such corporation is distributed in the same manner as that provided in sections 3 and 8 of this Agreement.

Section 7. Withdrawal From Further Participation. If at any time following the execution of this Agreement, there is an increase in NCPA's financial commitment, Project Members may partially withdraw, i.e., from participation in the increase, or may withdraw wholly from the Project. Such 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 8. 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 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

114

participation percentages for voting shall be established by dividing the amount of capacity agreed to be purchased by each Project Member by the total amount of such capacity 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 9. 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. If no quorum is present at a regular meeting of such Project Members, the absent Project Members shall pay \$50 each, the money to be paid into the working capital fund of the Project.

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

NORTHERN CALIFORNIA POWER AGENCY

CITY OF ALAMEDA

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

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

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

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

CITY OF BIGGS

CITY OF REDDING

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

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

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

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

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CITY OF GRIDLEY

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

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

CITY OF ROSEVILLE

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

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

CITY OF HEALDSBURG

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

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

CITY OF SANTA CLARA

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

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

CITY OF LODI

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

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

CITY OF UKIAH

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

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

CITY OF LOMPOC

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

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

PLUMAS-SIERRA RURAL ELECTRIC  
COOPERATIVE

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

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

CITY OF PALO ALTO

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

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

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PHASE II PROJECT PARTICIPATION PERCENTAGES  
FOR FINANCING OF PLANNING AND DEVELOPMENT ACTIVITIES  
FOR CONSTRUCTION OF COMBUSTION TURBINE GENERATING ACTIVITIES

<u>City</u>	<u>MW</u>	<u>Percent</u>
Alameda	6	12.00%
Biggs	0	0.00
Gridley	0	0.00
Healdsburg	3	6.00
Lodi	25	50.00
Lompoc	3	6.00
Palo Alto	0	0.00
Plumas-Sierra	1	2.00
Redding	0	0.00
Roseville	7	14.00
Santa Clara	0	0.00
Ukiah	<u>5</u>	<u>10.00</u>
Total	<u>50 MW</u>	<u>100.00%</u>

DAD  
7/26/83