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CITY COUNCIL MEETING

SEPTEMBER 7, 1983

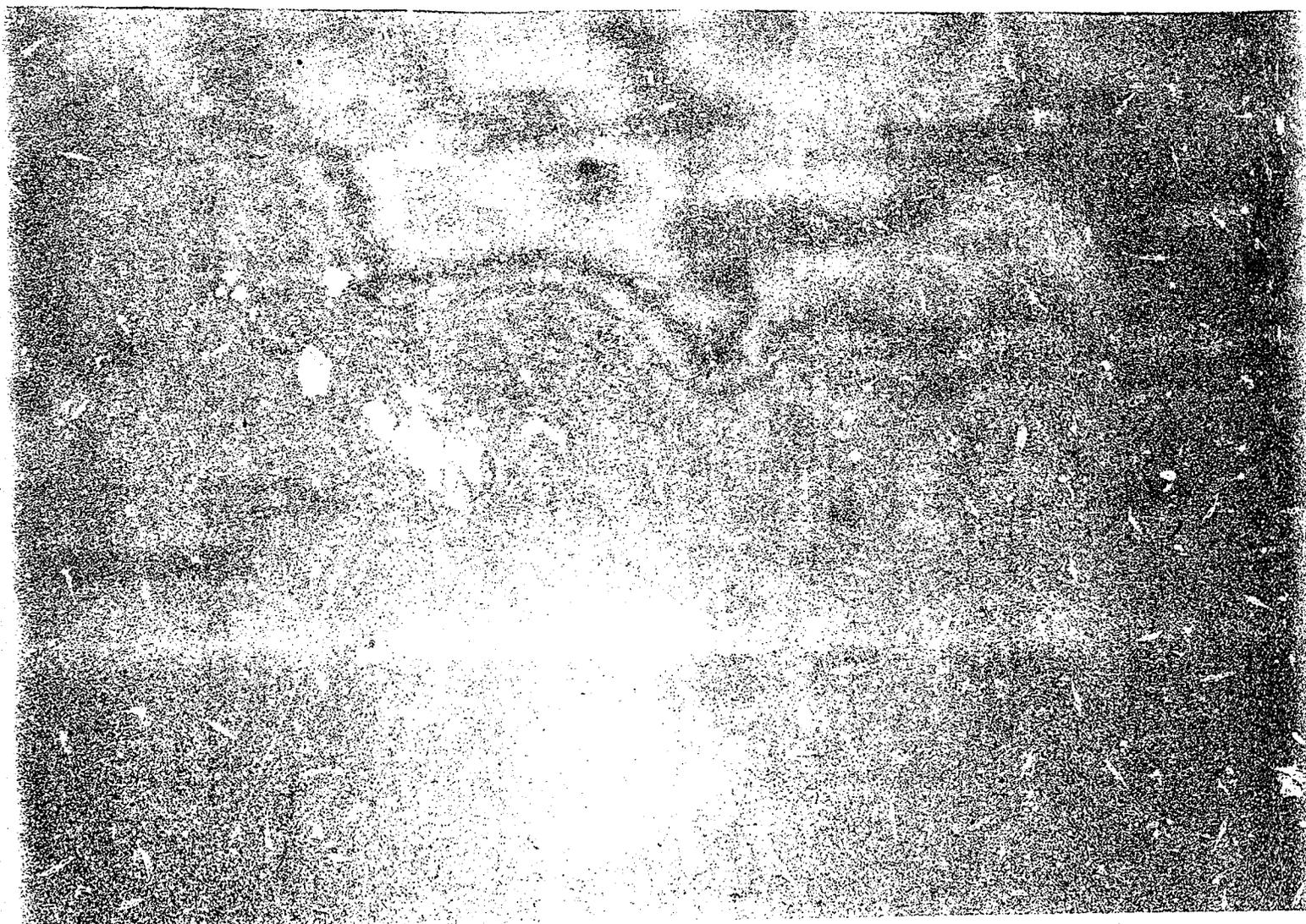
ORD. APPROVING  
AGREEMENT WITH  
NCPA FOR  
CONSTRUCTION,  
OPERATION, AND  
FINANCING OF  
TRANSMISSION  
PROJECT NUMBER  
ONE

Ordinance No. 1295 - An Ordinance 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 - Agreement for construction, operation, and financing of Transmission Project Number One, having been introduced at a regular meeting of the Lodi City Council held August 17, 1983 was brought up for passage on motion of Mayor Pro Tempore Snider, Reid second. Second reading of the Ordinance was then omitted after reading by title, and the Ordinance was then adopted and ordered to print by the following vote:

ORD. NO. 1295  
ADOPTED

Ayes: Council Members - Murphy, Reid, Snider, and Olson (Mayor)  
Noes: Council Members - None  
Absent: Council Members - None  
Abstain: Council Members - Pinkerton

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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

Fu 9/7  
HENRY A. GLAVES, Jr.  
City Manager

ALICE M. REIMCHE  
City Clerk

RONALD M. STEIN  
City Attorney

September 20, 1983

Gail Sipple  
Northern California Power Agency  
8421 Auburn Blvd. Suite 160  
Citrus Heights, CA 95610

Dear Gail:

Enclosed herewith please find Ordinance No. 1295, an Ordinance of the City Council of the City of Lodi, 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.

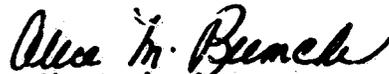
Also enclosed you will find an agreement for the construction, operation, and financing of Transmission Project No. 1 which has been executed by the Mayor of Lodi and attested to by the City Clerk.

We have also included with this letter an opinion by Ron Stein, our City Attorney, as required.

We will forward to you the other required documentations such as the affidavit of publication and the certified copy of the minutes once these documents have been completed and are in our office.

Should you have any questions regarding this matter, please do not hesitate to call.

Very truly yours,

  
Alice M. Reimche  
City Clerk

AMR:jj  
Enc.

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  
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LODI, CALIFORNIA 95241  
(209) 334-5634

HENRY A. GLAVES, Jr.  
City Manager

ALICE M. REIMCHE  
City Clerk

RONALD M. STEIN  
City Attorney

September 19, 1983

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

Dear Sirs:

I am acting as counsel to the City of Lodi (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 an 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 a municipal corporation of the State of California, 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 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.

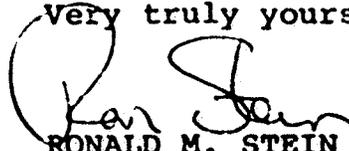
The opinion expressed in paragraph 3 above is qualified to the extent that the enforceability of the Agreement may be limited by any applicable bankruptcy, insolvency, debt adjustment, moratorium, reorganization,

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 the 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,



RONALD M. STEIN  
City Attorney

RMS:vc

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI, CALIFORNIA, 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.

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 Lodi (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) 230KV double circuit tower line from Castle Rock Junction in Sonoma County to the Lakeville Substation of Pacific Gas and Electric Company, (ii) a 230KV transmission line from the Geysers Geothermal Resources Area to the first point of interconnection with the existing transmission grid in Northern California and a transmission collection system, and (iii) a central dispatch facility; and all other associated facilities, rights, properties and improvements appurtenant thereto as provided and necessary therefor including any right to capacity or ownership interest in the foregoing; and

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 contract with the Agency the Project for transmission service available from the Project pursuant to an Agreement For Construction, Operation and Financing of Transmission Project Number One (the "Member Agreement") in substantially the form submitted to this City Council and dated for convenience as of July 1, 1983; and

WHEREAS, payments by the City pursuant to the Member Agreement will be used in part by the Agency for payment of principal 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 Lodi does ordain as follows:

1. The City Council hereby finds and determines that the terms and conditions of the Member Agreement (including the Transmission Service Share 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 Transmission Service Share of the City as set forth in Appendix A to said Member Agreement may be increased to such percentage, not to exceed 21.3255 percent (21.3255%), as shall be determined by the Council of the City. (NOTE - This percentage is to be revised downward by Northern California Power Agency to reflect the City's reduced participation in Geothermal Project No. 3).

3. The City is hereby authorized to enter into the Member Agreement and the Mayor and the City Clerk are hereby authorized to execute and deliver the Member Agreement by and on behalf of the City.

4. 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.

5. 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.

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

ADOPTED by the City Council and signed by the Mayor and attested by the City Clerk this 7th day of September, 1983.

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Evelyn M. Olson  
Mayor

Attest:

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Alice M. Reimche  
City Clerk

(SEAL)

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Final Draft of July 28, 1983

**AGREEMENT FOR CONSTRUCTION, OPERATION AND FINANCING  
OF TRANSMISSION PROJECT NUMBER ONE**

**Dated as of July 1, 1983**

**By and Among**

**NORTHERN CALIFORNIA POWER AGENCY**

**and**

**City of Alameda  
City of Biggs  
City of Gridley  
City of Healdsburg  
City of Lodi  
City of Lompoc  
City of Palo Alto  
City of Roseville  
City of Ukiah  
Plumas-Sierra Rural Electric Cooperative**

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**AGREEMENT FOR CONSTRUCTION, OPERATION AND FINANCING  
OF TRANSMISSION PROJECT NUMBER ONE**

This Agreement, dated as of July 1, 1983, 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 proposes to acquire and construct or cause to be acquired and constructed and to operate or cause to be operated the Project (either by the construction of facilities by NCPA or jointly with others, or by the purchase of an ownership interest or capacity right in such facilities constructed by others, or both) described herein; and.

WHEREAS, NCPA and certain of its members entered into an "Agreement for Financing of Planning and Licensing Activities for Construction of Geysers Transmission Facilities" made as of March 1, 1983, providing for the financing of certain planning and licensing activities in connection with a portion of 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 Transmission Contract" contemplated in the Second Phase Agreement; 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

WHEREAS, NCPA and the Project Participants (as hereinafter defined) now wish to enter into this Agreement to provide further for the construction, operation and financing of the Project, the sale by NCPA of transmission service available from the Project to the Project Participants, and the security for the Bonds to be issued to finance the Project;

NOW THEREFORE, the parties hereto do agree as follows:

1. Definitions. The following terms shall, for all purposes of this Agreement, have the following meanings:

(17)

(a) "Bonds" means bonds, notes or other evidences of indebtedness of NCPA (or of a nonprofit corporation on behalf of NCPA) issued to finance or refinance the Project, and includes additional Bonds to complete the Project.

(b) "Bond Resolution" means the resolution or resolutions providing for the issuance of Bonds and the terms thereof.

(c) "Electric System" means all properties and assets, real and personal, tangible and intangible, of the Project Participant now or hereafter existing, used or pertaining to the generation, transmission, transformation, distribution and sale of electric capacity and energy, including all additions, extensions, expansions, improvements and betterments thereto and equipplings thereof; provided, however, that to the extent the Project Participant is not the sole owner of an asset or property or to the extent that an asset or property is used in part for the above described electric purposes, only the Project Participant's ownership interest in such asset or property or only the part of the asset or property so used for electric purposes shall be considered to be part of its Electric System.

(d) "Initial Operation Date" means the first date when any portion of the facilities of the Project are available to provide transmission service, as shall be determined by the Commission of NCPA in accordance with prudent utility practices.

(e) "Project" means, a project consisting of (i) 230KV double circuit tower line from Castle Rock Junction in Sonoma County to the Lakeville Substation of Pacific Gas and Electric Company, (ii) a 230KV transmission line from the Geysers Geothermal Resources Area to the first point of interconnection with the existing transmission grid in Northern California and a transmission collection system, and (iii) a central dispatch facility; and all other associated facilities, rights, properties and improvements appurtenant thereto as provided and necessary therefor, including any right to capacity or ownership interest in the foregoing. The Project may be amended by the Project Participants in accordance with Section 11 of the Agreement, provided that any such amendment shall not have a material adverse effect on the security for the Bonds.

(f) "Project Participants" means those entities listed in Appendix A hereto and executing this Agreement, together in each case with their respective successors or assigns.

(g) "Revenues" means all income, rents, rates, fees, charges, and other moneys derived by the Project Participant from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing, (i) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing, and supplying of the electric capacity and energy and other services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System, (ii) the earnings on and income derived from the investment of such income, rents, rates,

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fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System and (iii) the proceeds derived by the Project Participant directly or indirectly from the sale, lease or other disposition of all or a part of the Electric System as permitted hereby, but the term "Revenues" shall not include (y) customers' deposits or any other deposits subject to refund until such deposits have become the property of the Project Participant, or (z) contributions from customers for the payment of costs of construction of facilities to serve them.

(h) "Transmission Service Share" means, with respect to each Project Participant, the percentage of the total available transmission service utilizing the Project to which such Project Participant is entitled pursuant to the terms of this Agreement. The Transmission Service Share for each Project Participant is set forth opposite the name of such Project Participant in Appendix A hereto, as such Appendix A shall be amended from time to time in accordance with Section 13 of this Agreement.

(i) "Trustee" means the entity or entities designated by NCPA pursuant to any Bond Resolution, to administer any funds or accounts required by such Bond Resolution or otherwise.

2. Purpose. The purpose of this Agreement is to sell transmission service available from the Project to the Project Participants, to provide the terms and conditions of such sale and to provide for the financing of the Project.

3. Construction and Operation. NCPA will use its best efforts to cause or accomplish the construction, operation and financing of the Project, the obtaining of all necessary authority and rights, and the performance of all things necessary and convenient therefor. Each Project Participant will cooperate with NCPA to that end, and will give any and all clarifying assurances by supplemental agreements that may be reasonably necessary in the opinion of NCPA's legal counsel to make the obligations herein more specific and to satisfy legal requirements and provide security for the Bonds.

NCPA may pledge and assign to any Trustee for any Bonds, all or any portion of the payments received hereunder from Project Participants, and upon notice from NCPA each Project Participant shall make payments due by it hereunder directly to any Trustee for the Bonds. Such pledge and assignment by NCPA shall be made effective for such time as NCPA shall determine and provide.

4. Obligation to Provide Transmission Service. Pursuant to the terms of this Agreement, NCPA shall provide or cause to be provided and each Project Participant shall obtain such Project Participant's Transmission Service Share of transmission service available from the Project. All transmission service utilizing the Project shall be scheduled in accordance with the practices and procedures mutually agreed to by the Commission of NCPA and the

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respective Project Participants. Such agreement shall not be unreasonably withheld by either NCPA or any Project Participant.

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 for transmission service available from the Project equal to the amounts anticipated to be needed by NCPA to meet the total costs of NCPA to provide transmission service available 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, and (ii) any other operation, maintenance and replacement costs of the Project, a reasonable reserve for contingencies, and all other Project costs. NCPA shall fix charges to the Project Participants to produce revenues to NCPA for transmission service available from the Project to meet the costs described in (i) and (ii) above based on Transmission Service Shares.

(b) To the extent that the funds provided under Section 5(a) of this Agreement are at any time not sufficient for such purposes, each Project Participant shall pay to NCPA an amount equal to such Project Participant's Transmission Service Share 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. 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 transmission service utilizing the Project is available to them 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 transmission service utilizing the Project is provided).

(c) Any payments required to be made by, or costs incurred by, NCPA or the Project Participants pursuant to Section 9.5 of the Interconnection Agreement among Pacific Gas and Electric Company, NCPA and certain of the Project Participants shall not be made or incurred under this Agreement.

(d) Each Project Participant shall make payments under this Agreement solely from the Revenues of, and as an operating expense of, its Electric System. 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.

(e) Each Project Participant shall make payments under this Agreement whether or not the Project or any part thereof is completed, operable, operating or retired and notwithstanding the suspension, interruption, interference, reduction or curtailment of transmission service utilizing the Project 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

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upon performance by NCPA or any other Project Participant under this Agreement or any other agreement.

(f) 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.

(g) 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.

(h) 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, the Commission of 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 based on estimates will be sent to each Project Participant not later than the fifteenth (15th) day of each calendar month showing the amount payable by such Project Participant of costs payable under Section 5(a) of this Agreement for the second succeeding calendar month, any amount payable by such Project Participant as its Transmission Service Share of costs payable under Section 5(b) of this Agreement, and the amount of any credits or debits as a result of any appropriate adjustments. 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 the Commission of NCPA at the time of adoption of the then most recent 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

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Participant's Transmission Service Share thereof pursuant to this Agreement, and other amounts payable for any fiscal year, exceed the billings to the Project Participant, the deficiency shall be added to the Project Participant's immediately succeeding billing statement. If the actual aggregate monthly costs and the Project Participant's Transmission Service Share thereof and any adjustment of or credit to the Project Participant's Transmission Service Share thereof or other amounts payable for any fiscal year are less than the billings to the Project Participant, such excess shall be credited to the Project Participant's billing statements for such period (not to exceed the immediately succeeding six months) and in such amounts as shall be determined by NCPA.

If a Project Participant questions or disputes the correctness of any billing statement by NCPA, it shall pay NCPA the amount claimed when due and shall within thirty (30) days of the receipt of such billing statement request an explanation from NCPA. If the bill is determined to be incorrect, NCPA will issue a corrected bill and refund any amount which may be due the Project Participant which refund shall bear interest from the date NCPA received payment until the date of the refund at an annual rate to be established by the Commission of NCPA at the time of adoption of the then most recent annual budget. If NCPA and the Project Participant fail to agree on the correctness of a bill within thirty (30) days after the Project Participant has requested an explanation, the parties shall promptly submit the dispute to arbitration under section 1280 et seq. of the Code of Civil Procedure.

**7. Obligation in the Event of Default.** (a) Upon failure of any Project Participant to make any payment in full when due under this Agreement, NCPA shall make written demand upon such Project Participant, and if said failure is not remedied within thirty (30) days from the date of such demand, such failure shall constitute a default at the expiration of such period. Notice of such demand shall be provided to each other Project Participant by NCPA.

(b) Upon the failure of any Project Participant to make any payment which failure constitutes a default under this Agreement, NCPA shall use its best efforts to sell and transfer for the defaulting Project Participant's account all or a portion of such Project Participant's Transmission Service Share of transmission service available from the Project for all or a portion of the remainder of the term of this Agreement. 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. Notwithstanding that all or any portion of the Project Participant's

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Transmission Service Share of transmission service available from the Project is so sold or transferred, the Project Participant shall remain liable to NCPA to pay the full amount of its Transmission Service Share of monthly costs as if such sale or transfer had not been made, except that such liability shall be discharged to the extent that NCPA shall receive payment from the purchaser or transferee thereof.

(c) Upon the failure of any Project Participant to make any payment which failure constitutes a default under this Agreement and causes NCPA to be in default under any Bond Resolution, NCPA may (in addition to the remedy provided by subsection (b) of this Section 7) terminate the provisions of this Agreement insofar as the same entitle the defaulting Project Participant to its Transmission Service Share of transmission service available from the Project. Irrespective of such termination, the obligations of the Project Participant under this Agreement shall continue in full force and effect.

(d) Upon the failure of any Project Participant to make any payment which failure constitutes a default under this Agreement, and except as sales or transfers are made pursuant to subsection (b) of this Section 7, (i) the Transmission Service Share of each nondefaulting Project Participant shall be automatically increased for the remaining term of this Agreement pro rata with those of the other nondefaulting Project Participants and (ii) the defaulting Project Participant's Transmission Service Share shall (but only for purposes of computing the respective Transmission Service Share of the nondefaulting Project Participants) be reduced correspondingly; provided, however, that the sum of such increases for any nondefaulting Project Participant shall not exceed, without written consent of such nondefaulting Project Participant, an accumulated maximum of 25% of the nondefaulting Project Participant's original Transmission Service Share.

(e) If a Project Participant shall fail or refuse to pay any amounts due to NCPA, the fact that other Project Participants have increased their obligation to NCPA pursuant to this Section 7 shall not relieve the defaulting Project Participant of its liability under this Agreement, and any Project Participant increasing such obligation shall have a right of recovery from the defaulting Project Participant to the extent of such respective increase in obligation caused by the defaulting Project Participant.

(f) Any Trustee for any Bonds shall have the right, as a third party beneficiary, to initiate and maintain suit to enforce this Agreement to the extent provided in the related Bond Resolution.

8. Transfers, Sales and Assignments of Transmission Service Share. Each Project Participant has full and unfettered

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rights to make transfers, sales assignments and exchanges (collectively "transfers") of its Transmission Service Share except as expressly provided otherwise in this Agreement. (a) No Project Participant shall transfer ownership of all or substantially all of its Electric System to another entity until it has first complied with the provisions of this subsection (a). A consolidation with another governmental entity or change in governmental form is not deemed a transfer of ownership.

(1) Such disposition or transfer shall be under terms and conditions that provide assurance that the obligations of the transferring Project Participant under this Agreement, and that NCPA's obligations under this Agreement, and any Bond Resolution, and under other agreements made or to be made by NCPA to carry out the Project, will be promptly and adequately met. NCPA may require that sufficient moneys of the transferring Project Participant to discharge such obligations be irrevocably set aside and maintained in a trust account, as a condition to the transfer of the Electric System, if no other adequate assurance is available.

(2) The transferring Project Participant shall give ninety (90) days advance written notice to NCPA of any proposed transfer pursuant to this subsection (a). Appendix A to this Agreement shall be amended as appropriate to reflect any transaction pursuant to this subsection (a).

(b) Notwithstanding any other provision of this Agreement, no Project Participant shall transfer, assign, sell or exchange any portion of its Transmission Service Share, 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.

**9. Surplus Transmission Service.** When a Project Participant has surplus transmission service available from the Project, NCPA shall, if requested by such Project Participant to do so, sell such surplus transmission service on behalf of such Project Participant in the following manner:

(a) NCPA shall use its best efforts to sell such surplus transmission service at a price at least equal to the Project Participant's cost therefor.

(b) Other Project Participants shall have a right of first refusal, and other NCPA members shall have the second right, at the sales prices set forth in subsections (c) and (d) of this Section 9.

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(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.

(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.

(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.

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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.

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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 W. Lynn Olson Mayor  
And Bill S. Bunch City Clerk

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

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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,