

Lompoc City Council Agenda Item

City Council Meeting Date: October 21, 2008

TO: Gary P. Keefe, City Administrator

FROM: Larry Silva, Interim Electric Utility Manager
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SUBJECT: NORTHERN CALIFORNIA POWER AGENCY AMENDED AND RESTATED POOLING AGREEMENT

RECOMMENDATION:

It is recommended that the City Council approve the Northern California Power Agency (NCPA) Amended and Restated Pooling Agreement (Agreement); and authorize the Mayor to execute the Agreement.

BACKGROUND:

The original pooling agreement was established to provide a mechanism for members to share the savings resulting from purchase, sale, schedule, and dispatch activities designed to minimize operating costs for the pool as opposed to each member operating on their own. The basic premise embodied in the agreement was that no member should be any worse off in a given transaction than they would be if they otherwise transacted on their own. In addition to that central premise, the agreement established the rules for participation in the pool, along with operational, billing, and dispute resolution protocols.

ISSUE:

The last major update to the body of the pooling agreement was completed in 1993, and as a result, the agreement is badly outdated. Consequences of the outdated nature of the agreement are manifested in several ways:

- Contractual obligations of NCPA to pool members and between pool members cannot be honored because the industry structure on which the obligations were predicated no longer exists.
- Substitute obligations, while largely supported by pool members, are not memorialized in a member approved contractual agreement, increasing the risk of costly disputes.
- Informal agreements, from year to year, particularly in the area of resource adequacy have tended to penalize members with surplus capacity by delaying or avoiding the implementation of a long-term solution to a well known problem.

- Counterparty willingness to extend credit and/or transact with NCPA has been negatively impacted by NCPA staff's hesitancy to provide an agreement that counterparties will immediately recognize as outdated.
- NCPA credibility and ability to attract potential new members is diminished by the absence of a clear operating agreement that would govern the member relationship.

DISCUSSION:

Redrafting of the Agreement was initiated in August, 2007. To date, over twenty (20) sessions have been held, over this fourteen (14) month period with members participating actively in the re-drafting process. Legal counsel from NCPA members have reviewed and provided comments that have either been incorporated into the Agreement or otherwise resolved. The current version of the updated Agreement (attached) is the beneficial result of all of those efforts.

A high level summary of the key changes to the Agreement is attached to this report as Exhibit A. Selected changes to the Agreement that have been dramatically changed from the prior version are discussed below.

Pooling Committee: The Pooling Committee has been eliminated and replaced with an ad-hoc committee that will meet from time to time for limited purposes as requested by the NCPA General Manager and will be dissolved when the limited purpose has been met.

Resource Planning, Resource Sale and Purchase, and Resource Development: As originally conceived, the Agreement provided for long term (20 year) planning processes that were intended to result in the identification of resource needs that would be pursued in a joint or pooled fashion. As the electric markets throughout the west have been transformed, however, tolerance for risk, regulatory compliance requirements, and member specific resource preferences have resulted in a need to have a more customized approach in terms of assembling a resource portfolio. The Agreement update addresses these market changes and new member needs by scaling back the emphasis on long term joint planning, allowing for greater flexibility to pursue individual procurement activities, and by recognizing that members desiring longer term planning and procurement activities will be accommodated generally, through separate agreements.

Resource Adequacy: Resource Adequacy rules have proven to be a constantly moving target under the California Independent System Operator (CAISO) tariff. Municipal entities, through their local regulatory authority, have been given some autonomy to establish planning reserve margin levels and to establish limited rules and criteria for determining which resources will count toward their individual Resource Adequacy obligations. Variances in member needs and preferences regarding the development of a Resource Adequacy program has resulted in NCPA

recommending a flexible program that will allow members desiring to participate in a pooled program to do so through the Agreement and members desiring an independent approach, to pursue Resource Adequacy obligations on an independent basis.

ECONOMIC IMPACT:

Costs associated with the new Agreement will be approved in the normal process of the NCPA annual budget. These costs will be shared among members in accordance with approved cost allocation methodologies.

Larry Silva, Interim Electrical Utility Manager

APPROVED FOR SUBMITTAL TO THE CITY ADMINISTRATOR:

Ron Stassi, Utility Director

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL:

Gary P. Keefe, City Administrator

Attachments: (1) [NCPA Amended and Restated Pooling Agreement](#)
(2) [Exhibit A – Summary of Major Modifications to the Pooling Agreement](#)