

Amended and Restated
TUOLUMNE PUBLIC POWER AGENCY
JOINT POWERS AGREEMENT

This Amended and Restated Joint Powers Agreement (“Agreement”) is made and entered into this 1st day of January, 2013, by and between the public agencies listed in Section III(A) (collectively, “Parties” or “Member Agencies”) within Tuolumne County, California who become signatories hereto, witnesseth:

Preamble

Whereas, Member Agencies entered into the original Agreement, dated May 19, 1982, forming the Tuolumne County Public Power Agency (“Original Agreement”), with other Tuolumne County public agencies joining in the intervening years; and

Whereas, the Member Agencies desire to amend and restate the Original Agreement; and

Whereas, each of the signatory agencies to this Agreement and Tuolumne Public Power Agency is operating “for public benefit” as a “public agency” as defined by Section 6500 of the Government Code of the State of California, and further interpreted as a “preference agency” under Section 9(c) of the Reclamation Act of 1939, 43 U.S.C. § 485h(c); and

Whereas, Public Law 87-784, enacted in 1962 by the U.S. Congress, provided that 25 percent of the power generation produced at New Melones Dam be offered for sale to preference customers located within Calaveras and Tuolumne Counties; and

Whereas, the Joint Exercise of Powers Act (Government Code §§ 6500 *et seq.*) under which the Tuolumne Public Power Agency is organized, permits two or more public agencies by agreement, to jointly exercise any power common to the contracting parties; and

Whereas, the Parties hereto possess in common the power, among other things, to purchase and provide electrical service for their own use and to serve as aggregators under the State’s Direct Access and Community Choice Aggregation laws to serve other electrical loads within the County of Tuolumne; and

Whereas, the Member Agencies find that it is to their mutual advantage and public benefit to coordinate their use of energy, within the extent permitted by laws and regulations governing their respective authorities; and

Whereas, this Agreement supersedes and repeals the Original Agreement.

NOW, therefore, in consideration of the mutual terms, covenants and conditions herein agreed, the Parties hereto agree as follows:

I. Purpose of Agreement

It is the purpose of this Agreement to establish an agency to be recognized as the TUOLUMNE PUBLIC POWER AGENCY (“TPPA” or “Agency”), formerly known as the Tuolumne County Public Power Agency, for the purpose of:

- 1) Establishing its membership as a means of governance.
- 2) Acquiring electrical capacity and energy (herein collectively, “power”) for Member Agencies’ use and for the use of other customers.
- 3) Obtaining services for the delivery of such power to Member Agencies’ and customers’ places of use.
- 4) Contracting for short term “in county” retail electrical services to augment public benefit through enhanced economic development to fully utilize Tuolumne County’s New Melones power entitlement until such time that TPPA membership requires this power for its own public use.
- 5) Conducting studies relating to the acquisition, use and conservation of power supplies.
- 6) Exercising all other powers necessary and incidental to accomplish the purposes set forth herein.

II. Powers of Agency

TPPA shall have the power, in its own name to: make and enter into contracts; employ agents and employees; establish committees, as necessary, and provide general directives for the work of such committees; explore and act upon ways of securing additional sources of power and means of making it available to member agencies and other customers; acquire, hold and dispose of property; take appropriate measures to meet all financial obligations of the Agency through assessments and other contributions, as hereinafter provided for; to adopt rules and regulations and to incur only those debts, liabilities or obligations necessary for the accomplishment of the purposes of this Agreement. The Agency shall have all powers common to Member Agencies, including powers set forth elsewhere in this Agreement. Without limiting the generality of the foregoing and in furtherance of Section I, TPPA shall have the power (a) to establish and operate a program for the acquisition and delivery of power under the terms of that certain “Agreement Relating to Service to Calaveras Public Power Agency and Tuolumne Public Power Agency Under Western Area Power Administration-PG&E Wholesale Distribution Tariff Service Agreement (Appendix B),” or any successor or replacement agreement and (b) establish and operate a program(s) for the acquisition and delivery of power (i) as a public agency under Public Utilities Code section 218.3(b) pursuant to the State’s Direct Access program and (ii) as or for a Community Choice Aggregator under Public Utilities Code section 331.1 pursuant to the State’s Community Choice Aggregation program. At the discretion of the TPPA Board of Directors, TPPA may jointly or separately operate the above-described programs, in whole or part.

III. Membership

A) Current Tier 1 Members: As of the effective date of this Agreement, the Parties to this Agreement are as follows:

- 1) County of Tuolumne
- 2) City of Sonora
- 3) Tuolumne Utilities District
- 4) Groveland Community Services District
- 5) Twain Harte Community Services District
- 6) Columbia Community College - YCCD
- 7) Belleview School District
- 8) Big Oak Flat/Groveland School District
- 9) Chinese Camp School District
- 10) Columbia Union School District
- 11) Curtis Creek School District
- 12) Jamestown School District
- 13) Sonora School District
- 14) Sonora Union High School District
- 15) Soulsbyville School District
- 16) Summerville Elementary School District
- 17) Summerville High School District
- 18) Tuolumne County Superintendent of Schools
- 19) Twain Harte-Long Barn School District
- 20) Columbia Fire District
- 21) Jamestown Fire District
- 22) Mi-Wuk Fire District
- 23) Tuolumne Fire District
- 24) Jamestown Sanitary District
- 25) Tuolumne Sanitary District
- 26) Central Sierra Child Support Agency
- 27) Motherlode Fairgrounds
- 28) Jamestown Mine Trustee
- 29) Area 12 Agency on Aging
- 30) Amador-Tuolumne Community Action Agency

B) Membership Qualifications

1) Any purchaser and user of electrical power which (i) is considered a public agency pursuant to Government Code section 6500 and that qualifies as a Preference Customer under Federal Reclamation law and (ii) has electrical load within the County of Tuolumne may become a Member Agency, as long as its electrical load meets the minimum required criteria under TPPA's current arrangements for wholesale distribution service, direct-access service, community choice aggregation service, or other applicable distribution service. All public entities listed in Section III(A) are deemed Tier 1 Member Agencies. All Member Agencies whose jurisdiction is wholly located within the County of Tuolumne shall be henceforth recognized as Tier 1 members. All other members (e.g., tribal entities or public agencies that operate for the public benefit within Tuolumne County but may have other locations outside the County) shall be recognized as Tier 2 members.

2) To become a Member Agency, the governing body of each new Member Agency (Tier 1 or Tier 2) shall adopt a resolution approving this Agreement and authorizing membership in TPPA.

- a) Prospective Member Agencies are to complete the Membership Application process which includes providing a completed membership form, a certified copy of the agency's resolution and the submission of a one-time initiation fee to the Agency administration.
- b) All new memberships require the approval of the TPPA Board of Directors, Western Area Power Administration and PG&E before they can accept power and any membership benefits through the Agency.
- c) New members of the Agency that are dissatisfied with the charges for power established by the TPPA Board of Directors, as described in Section VII, understand and agree that they have, as their sole remedy, the option to withdraw from TPPA membership, as described in Section III(D).

C) Consumption Rights: In the event that the amount of power from the New Melones entitlement available to the Agency is not sufficient to meet the consumption needs of all Member Agencies and customers, the priority for such power (or for rate preferences reflecting such power) is established in the following order:

- 1) Tier 1 Member Agencies;
- 2) Direct access customers;
- 3) Tier 2 Member Agencies; and
- 4) Community choice aggregation or applicable distribution service customers.

The priority as between Tier 2 Member Agencies and other customers as set forth in this Section may be modified by vote of the TPPA Board of Directors. The first priority of Tier 1 Member Agencies may only be modified by an amendment to this Agreement.

D) Withdrawal from TPPA: Any Member Agency wishing to withdraw from TPPA membership prior to receiving power may do so by delivering a ninety (90) Day Notice of the intention to withdraw to the TPPA Board of Directors.

- 1) Any Member Agency wishing to withdraw from membership after receiving power may do so by delivering a ninety (90) Day Notice of their intention to withdraw to the TPPA Board of Directors.
- 2) Any Member Agency seeking withdrawal shall pay all charges due to the Agency.
- 3) A withdrawal by any party to this Agreement shall have no impact on the membership status of the remaining Member Agencies.

- E) Member Responsibility: All Member Agencies shall abide by all applicable laws, rules and regulations of the State of California and the Federal government with regard to power received through the Agency.

IV. Agency Organization

- A) The Governing Board of TPPA (“TPPA Board of Directors”) shall be the Tuolumne County Board of Supervisors. The TPPA Board of Directors shall receive no additional compensation for their Agency leadership other than the remuneration they receive as Board of Supervisors members.
- B) The Agency Director shall be appointed by the TPPA Board of Directors to oversee all aspects of the Agency administration and operations.
- C) A Deputy Director may be designated by the Agency Director to manage the Agency’s day-to-day affairs, including, but not limited to, the budget and long range planning, but the Agency Director retains oversight responsibility.
- D) Agency Administrative Staff may be assigned by the Agency Director to ensure timely billing, payment collection, and other administrative duties as assigned
- E) The Agency Treasurer shall be Tuolumne County’s Tax Collector/Treasurer, who shall be the depository with custody of all Agency funds and shall serve on his/her official bond. The Treasurer shall be responsible for strict accounting responsibilities as outlined in the California Government Code, Sections 6505 and 6505.5.
- F) The Agency Controller shall be Tuolumne County’s Auditor, who shall draw warrants to pay demands against the Agency to meet all of the Agency’s obligations, as authorized by the TPPA Board of Directors. The Agency Controller shall serve on his/her official bond.
- G) The Agency Attorney shall be Tuolumne County’s County Counsel, the legal advisor to the Agency, its Board of Directors and its staff. The Agency Counsel will cooperate with the TPPA Board of Directors when special counsel for the Agency is required.
- H) Meetings for the TPPA Board of Directors shall be called at least once a year to review and adopt the annual budget.
- 1) Additional meetings of the TPPA Board of Directors may be called by:
 - a. The Chair of the TPPA Board of Directors, who is also the Tuolumne County Board of Supervisors Chair for the calendar year.
 - b. At least two members of the TPPA Board of Directors who request a meeting in writing to the Agency Board Chair.

- c. Representatives from at least three Member Agencies who request a meeting in writing to the Agency Board Chair.
 - d. The administrative branch of the Agency (Director and/or Deputy Director) for updates, advisements, fiscal issues and all matters requiring TPPA Board of Directors approval.
- 2) Member Agencies shall be given notice at least ten (10) business days prior to any meeting date coming before the TPPA Board of Directors or for any meeting open to all JPA members not going before the TPPA Board of Directors.
 - 3) Meetings called by members of the TPPA Board of Directors or representative Member Agencies shall be conducted in a timely fashion, not to exceed thirty (30) days from the date of the written request.
 - 4) No business may be transacted without a quorum of the TPPA Board of Directors being present. A simple majority is required to approve all matters that come before the TPPA Board of Directors, except amendments to the JPA Agreement, as provided for in Section VI of this Agreement.

V. Full Utilization of New Melones Power Entitlement

In accordance with the TPPA Board of Directors directives issued in July 2012, the Agency is to pursue full utilization of the Flood Control Act of 1962 (New Melones power) entitlement. Tuolumne County is entitled to power based upon a 20 year rolling average of generation at New Melones, which is shared with Sierra Conservation Center. Accounting for load growth of existing Member Agencies over the next two decades, there is unutilized New Melones power entitlement available for use by a broadened scope of members, and customers of the Agency. Subject to the consumption rights and preferences specified in Section III(C), the TPPA Board of Directors shall seek to maximize the County's utilization of its New Melones entitlement through any means consistent with applicable federal, state and local laws.

VI. Amendments to the Agreement

This Agreement may be amended upon the approval of two-thirds of all Tier 1 Member Agencies who also consumed at least two-thirds of the Agency's total delivered power during the previous twelve (12) month period. Amendments to this Agreement shall be approved by resolution or equivalent authorizing document of the governing bodies of the Member Agencies.

VII. Charges and Assessments

The TPPA Board of Directors shall establish charges for power used by Member Agencies and any end-use customers served under Direct Access or Community Choice Aggregation

programs operated by TPPA. Without limiting the generality of the foregoing and the discretion accorded governing boards under California law to establish charges for power on such basis as the TPPA Board of Directors shall reasonably determine (i) said charges shall include the cost of power, transmission and distribution, overhead, administrative expenses, legal and professional fees, meter reading charges, application fees, and all other fees and charges including an amount calculated to establish and maintain reasonable reserve accounts and capital improvement project funding and (ii) the TPPA Board of Directors may establish different charges for Tier 1 and Tier 2 Member Agencies, and for other customers served by TPPA. The TPPA Board of Directors shall establish uniform charges for power for all Tier 1 Member Agencies.

- A) Billing: The Agency shall bill each Member Agency and customer monthly for power based upon the charges established by the TPPA Board of Directors. Payment shall be made within twenty (20) business days from the billing invoice date. Any bill not paid within thirty (30) business days from the billing invoice date shall be subject to a late fee assessment of ten percent (10%) of the unpaid balance, for every month that the bill remains unpaid.
- B) Delinquent Accounts: Any account in arrears for more than three (3) consecutive months is subject to termination, after receipt of official notice from the Agency Director. An expelled Member Agency may be reinstated only after it has:
 - 1. Paid all amounts due plus the accrued 10% penalties;
 - 2. Deposited an amount equal to the sum of energy costs for six (6) months, averaged over the preceding twelve (12) months; and
 - 3. Fulfilled the requirements of a new member, pursuant to Section III(B).
- C) Withdrawal: Any Member Agency that withdraws from membership shall be obligated to pay its pro-rata share of all encumbrances and indebtedness to the Agency as of the effective date of withdrawal.
- D) Accountability of Funds: TPPA is strictly accountable for all TPPA funds and participates annually in the independent Single Audit process. This audit is conducted by an outside Certified Public Accountancy firm in accordance with auditing standards generally accepted in the United States. Each year's report is available for any member agency representative to review during normal business hours.

VIII. Benefits of Membership

TPPA membership entitles Tier 1 and Tier 2 members to benefit in the following ways:

- A) Reduced power charges over standard investor-owned utility rates.
- B) A flat rate for consumption, which means no time of use schedules or accelerated rates for peak use times.

- C) Eligibility to participate in TPPA's Energy Conservation Program.

IX. Resolution of Disputes

If the parties to this Agreement are unable to reach agreement with respect to a matter herein specified to be approved, established, determined or resolved by agreement of the parties, a party may call for submission of such matter or dispute to arbitration in the matter herein set forth. This call of an impasse shall be binding upon the other parties to the dispute. The TPPA Board of Directors shall continue to do all things and make all expenditures necessary in carrying out the duties and responsibilities provided for in this Agreement pending the final decision of the arbitrator.

- A) Arbitration Notice Requirement: Any party aggrieved has the right to request arbitration upon thirty (30) days' notice after declaration of impasse, at which time all interested parties shall then proceed to arbitration selection. Arbitration briefs shall be prepared if requested by the arbitrator selected and in the manner so requested.
- B) Selection of Arbitrator: Within ten (10) days following the submission of request for arbitration, the parties shall meet for the purpose of selecting one arbitrator. In the event the parties shall fail to select such arbitrator as herein provided, then they shall request the American Arbitration Association (or a similar organization if the American Arbitration Association should not at that time exist) to provide a list of arbitrators, the number of which shall be one more than there are sides to the dispute. The arbitrator selected above, if any, and all arbitrators on such list shall be available to serve and shall be skilled and experienced in the field which gives rise to the dispute and no person shall be eligible for appointment as an arbitrator who is an officer, employee or shareholder of any of the parties to the dispute or is otherwise interested in the matter to be arbitrated. Within thirty (30) days after the date of receipt of such list, the parties shall take turns striking names from said list. The last name remaining on said list shall be the selected arbitrator. Within ten (10) days after such selection, the parties shall submit to such arbitrator the written notices prepared pursuant to Section A. hereof.
- C) Governed Arbitration: Except as otherwise provided in this Section IX, the arbitration shall be governed by the rules of the American Arbitration Association (or a similar organization if the American Arbitration Association should not at that time exist) from time to time in force, except that, if such rules and practices as herein modified shall conflict with the laws of the State of California then in force, such laws shall govern. Arbitration (and the Arbitrator) shall be governed under the laws of the State of California. This submission and agreement to arbitrate shall be specifically enforceable. The findings, decision and award of the arbitrator upon any question submitted to it hereunder shall be final and binding upon the parties to the extent and in the manner provided by the laws of the State of California.

- D) The Right to Arbitrate: Included in the issues which may be submitted to arbitration pursuant to this Section is the issue of whether the right to arbitrate a particular dispute is permitted under this Agreement.
- E) Arbitrator's Request for Additional Information: The arbitrator shall hear evidence submitted by the parties and may call for additional information. Such additional information shall be furnished by the party or parties having such information. The arbitrator shall have no authority to call for additional information or determine issues not included in the submittal statement.
- F) Arbitrator's Award: The award of the arbitrator shall contain findings with respect to the issues involved in the dispute, including the merits of the respective positions of the parties, the materiality of any default and the remedy or relief which shall be required to resolve the dispute. The arbitrator may not grant any remedy or relief which is inconsistent with this Agreement. The arbitrator shall also specify the time within which the party shall comply with the arbitrator's award. In no event shall the award of the arbitrator contain findings on issues not contained in, or grant a remedy beyond that sought.
- G) Arbitrator's Award Regarding Default: If the arbitrator determines that a default exists, the award of the arbitrator shall contain findings relative to the period within which the defaulting party must remedy the default (or commence remedial action), and the remedies which may be exercised by the non-defaulting parties in the event the default is not remedied within such period.
- H) Arbitration Fees and Expenses: The fees and expenses of the arbitrator shall be shared equally among the parties involved in the arbitration, unless the decision of the arbitrator shall specify some other apportionment of such fees and expenses. All other expenses and costs of the arbitration shall be borne by the party incurring the same.

X. General Provisions

- A) Assumption of Debts: Pursuant to Government Code section 6508.1, none of the debts, liabilities or obligations of the Agency shall be the debts, liabilities or obligations of any of the members of TPPA unless assumed in a particular case by resolution of the governing body of the member to be charged.
- B) Dissolution – Property: Any property acquired by the Agency shall remain the property of TPPA until dissolution of the Agency as a legal entity. Upon such dissolution, said property, whether real or personal, shall be divided among and distributed to all of the parties who at any time during the existence of the Agency were parties to this Agreement in proportion to the non-reimbursable contributions made by each such party to the Agency during its legal existence.
- C) Dissolution - Surplus Money: Any surplus money on hand upon dissolution of the Agency shall be returned to participating public agencies in proportion to the contributions made by each thereof.

- D) Insurance: The TPPA Board of Directors shall procure public liability and other insurance from a California admitted insurer in good standing (or through another established public sector self insurance or excess program) to protect TPPA and each of the parties hereto, charging the cost thereof to the operating costs of the Agency. The TPPA Board of Directors shall take no other formal action until insurance has been procured.
- E) Immunities: All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, all pension, relief, disability, worker's compensation, and other benefits which apply to the activity of officers' agents or employees of any such public agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them in the same degree and extent while engaged in the performance of any of their functions or duties extraterritorially under the provisions of Article 1 of Chapter 5, Division 7 of Title 1 of the Government Code of the State of California and as provided by law.
- F) Severability: It is hereby declared to be the intention of the signatories to this Agreement that the paragraphs, sentences, clauses and phrases of this Agreement are severable, and if any phrase, clause, sentence, paragraph or article of this Agreement shall be declared unconstitutional or invalid for any reason by the valid judgment or decree of a Court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining paragraphs, clauses, phrases, sentences and articles of this Agreement.
- G) Notices: All notices required or given pursuant to this Agreement shall be deemed properly served when deposited, postage prepaid, certified or registered, in the United States mail, addressed to each signatory party at the address indicated on this Agreement, adjacent to the signature line of each party.
- H) Agency Designation: Pursuant to Government Code section 6509, TPPA's exercise of power is subject to the restrictions upon the manner of exercising the power of Tuolumne County.
- I) Repeal: This Agreement supersedes and repeals the Original Agreement dated May 19, 1982.

XI. Effective Date

This Agreement shall become effective upon the approval of two-thirds of all existing Member Agencies who also consumed at least two-thirds of the Agency's total delivered power in 2012. This Agreement shall be signed by an authorized agent from each Member Agency that has adopted a resolution as noted above.

Signatories to this Agreement

Seal	X _____ Type Full Name (here)/Title (here)
	_____ Name of Agency (above)
	_____ Mailing Address
	_____ City, State, Zip

	email _____ Date _____

Attest: _____
Type Name / Title Date

Attachment:
Wet signature Member Agency Governing Body Resolution