# Office of Audit Services

# Public Agency Review

# Northern California Power Agency

Employer Code: 1821
Job Number: P12-010

May 2013

**California Public Employees' Retirement System**
**Office of Audit Services**
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May 22, 2013

Employer Code: 1821
CalPERS ID: 5023339837
Job Number: P12-010

Northern California Power Agency
Lynn Bianchi-Rossi, HR Director
651 Commerce Drive
Roseville, CA 95678

Dear Ms. Bianchi-Rossi:

Enclosed is our final report on the results of the public agency review completed for the Northern California Power Agency. Your agency's written response included disagreement with some of the findings; however, you have also implemented or agreed to implement corrective action to all of the findings in the report. Based on the information contained in your agency's response, our recommendations remain as stated in the report. In accordance with our resolution policy, we have referred the issues identified in the report to the appropriate divisions at CalPERS. Please work with these divisions to address the recommendations specified in our report. It was our pleasure to work with your agency and we appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original Signed by Margaret Junker
MARGARET JUNKER, Chief
Office of Audit Services

Enclosure

cc: Risk and Audit Committee Members, CalPERS
Peter Mixon, General Counsel, CalPERS
Karen DeFrank, Chief, CASD, CalPERS
Anthony Suine, Chief, BNSD, CalPERS
James H. Pope, General Manager, NCPA
Michael F. Dean, General Counsel, NCPA

# NORTHERN CALIFORNIA POWER AGENCY

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## RESULTS IN BRIEF

The Office of Audit Services (OAS) reviewed the Northern California Power Agency's (Agency) enrolled individuals, member compensation, retirement information and other documentation for individuals included in test samples. A detail of the findings is noted in the Results section beginning on page three of this report. Specifically, the following findings were noted during the review:

- Payrate was under-reported.
- Payrates reported were higher than authorized.
- Holiday pay was not reported.
- Reportable temporary upgrade pay was not reported.
- Non-reportable temporary upgrade pay was reported.
- Employee hired through a temporary employment agency was not enrolled.
- Publicly available pay schedules did not meet criteria.

This review did not include a determination as to whether the Agency's simultaneous enrollment of members in supplemental retirement benefit plans is in compliance with the Public Employees' Retirement Law (PERL). OAS will continue with a separate review on this issue and will issue a second report pertaining to the determination upon conclusion of the review.

## AGENCY BACKGROUND

The Agency is a joint powers agency formed by member public entities under the laws of the State of California. The Agency is responsible for purchasing, generating, transmitting, and selling electrical energy and for providing other related services to its members as each may require. The Agency is governed by a Commission comprised of one representative for each member. The Commission is responsible for the general management of the affairs, property, and business of the Agency. Memoranda of Understanding (MOU), policies and procedures, and employment agreements outline Agency's employees' salaries and benefits and state the terms of employment agreed upon between the Agency and its employees. The Agency contracted with the California Public Employees' Retirement System (CalPERS) effective April 7, 2002, to provide retirement benefits for local miscellaneous employees.

All contracting public agencies, including the Agency, are responsible for the following:

- Determining CalPERS membership eligibility for its employees.
- Enrolling employees into CalPERS upon meeting membership eligibility criteria.

- Enrolling employees in the appropriate membership category.
- Establishing the payrates for its employees.
- Approving and adopting all compensation through its governing body in accordance with requirements of applicable public meeting laws.
- Publishing all employees' payrates in a publicly available pay schedule.
- Identifying and reporting compensation during the period it was earned.
- Ensuring special compensation is properly identified and reported.
- Reporting payroll accurately.
- Notifying CalPERS when employees meet Internal Revenue Code annual compensation limits.
- Ensuring the employment of a retired annuitant is lawful and reinstating retired annuitants that work more than 960 hours in a fiscal year.

## SCOPE

As part of the Board approved plan for fiscal year 2012/2013, the OAS reviewed the Agency's payroll reporting and member enrollment processes as these processes relate to the Agency's retirement contract with CalPERS. The review period was limited to the examination of sampled records and processes from July 1, 2009, through June 30, 2012. The on-site fieldwork for this review was conducted from August 27, 2012, through August 31, 2012. The review objectives and a summary of the procedures performed are listed in Appendix B.

# NORTHERN CALIFORNIA POWER AGENCY

## OFFICE OF AUDIT SERVICES REVIEW RESULTS

**Finding 1:** Payrate was under-reported.

***Recommendations:***

The Agency should report correct payrates to CalPERS.

The Agency should work with the CalPERS Customer Account Services Division (CASD) to make the necessary adjustments to the member's account pursuant to Government Code Section 20160.

***Condition:***

The Agency under-reported payrates throughout the scope of the review period, July 1, 2009, through June 30, 2012, for one contracted member who deferred a portion of his annual salary to a deferred compensation plan. The member's contracted salary for calendar year 2009 was $293,200; however, the Agency reported a payrate equivalent to $260,000. The difference in payrate reported was $33,200, which was the same amount the employee elected to defer to a deferred compensation plan. For calendar year 2010, the employee's contracted salary was increased to $303,462; however, the Agency reported a payrate equivalent to $270,000. The difference in payrate reported was $33,462, which was the same amount the employee elected to defer to a deferred compensation plan. Pursuant to Government Code Section 20636(b)(2)(A), payrates reported to CalPERS shall include an amount deducted from a member's salary for participation in a deferred compensation plan. Therefore, the Agency should have reported payrates equivalent to the employee's contracted salary, including the amounts deferred to the deferred compensation plan. .

Section 401(a)(17) of the Internal Revenue Code provides dollar limitations on annual compensation that can be taken into account under qualified retirement plans. The compensation limit is only applicable to persons who first became members or participants of CalPERS on or after July 1, 1996.

For those members who are subject to the limit, their final compensation will be capped at the limit in effect for each 12 consecutive-month period that is used to calculate their allowance if they were to retire. The Agency should report the full payrate and actual earnings for all members in my|CalPERS and the system will flag and notify the Agency when the contribution limit has been reached for that calendar year. Member contributions must stop when the member's actual earnings reach the contribution limits. For example, the annual compensation limit for calendar year 2013 is $255,000. Therefore, member contributions should not made on earnings that exceed the $255,000 limit within the 2013 calendar year. The earnings are those earnings that are reportable to CalPERS, which exclude earnings for overtime, automobile allowances, lump sum payouts, etc. The compensation limit does not limit the salary an employer can pay an employee who is a member of CalPERS. Once the calendar year is over, my|CalPERS will prompt the Agency to report contributions for the member and begin the earnings monitoring for the new calendar year.

***Criteria:***

Government Code: § 20160, § 20636(a), § 20636(b)(1) and (2)(A)

**Finding 2:** Payrates reported to CalPERS were higher than authorized.

***Recommendation:***

The Agency should only report payrates that have been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws.

The Agency should work with CASD to determine the impact of this incorrect reporting and make the necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

***Condition:***

The Agency had a performance incentive pay plan for unrepresented management employees, which was approved by the governing body, and provided for allowable merit increases and/or performance bonuses based on a matrix that correlated to their respective performance appraisal ratings. OAS identified five sampled employees who received salary increases in January 2012 that were higher than the allowable increases based on the 2012 performance matrix. OAS also identified that the Agency reported the higher payrates to CalPERS beginning January 1, 2012. The variances ranged from 0.25 to 2.75 percent ($.09 to $2.96 an hour).

***Criteria:***

Government Code: § 20049, § 20160, § 20636(b)(1), § 20636(d)

**Finding 3:** Holiday pay was not reported.

***Recommendation:***

The Agency should report holiday pay for employees who are normally required to work on an approved holiday because they work in positions that require scheduled staffing without regard to holidays.

The Agency should work with CASD to determine the impact of this non-reporting and make the necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

***Condition:***

The Agency has certain positions that are normally required to work on holidays regardless of their work schedule, such as Operator Technicians. OAS reviewed an Operator Technician IV employee who was required to work on the Memorial Day holiday in May 2012. Pursuant to the International Brotherhood of International Workers (IBEW) Local 1245 MOU, the employee was paid eight hours of holiday pay at the employee's regular rate of $45.17 an hour, which equated to $361.36. The employee also received four hours of holiday premium pay at one-and-a-half times the regular rate, or $67.76 an hour, which equated to $271.02 plus $15.00 for holiday shift premium pay. The Agency did not report the additional compensation received for working the holiday as special compensation to CalPERS.

***Criteria:***

Government Code: § 20160, § 20636(a), § 20636(c)(1), § 20636(c)(6)

California Code of Regulations: § 571(a)(5)

**Finding 4:** Reportable temporary upgrade pay was not reported to CalPERS.

***Recommendations:***

The Agency should report temporary upgrade pay as special compensation in accordance with the requirements of California Code of Regulations Section 571.

The Agency should work with CASD to determine the impact of this non-reporting and make the necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

***Conditions:***

The Agency did not report temporary upgrade pay for two sampled employees pursuant to California Code of Regulations Section 571. The Agency stated its policy was to wait six months before reporting temporary upgrade pay to CalPERS. However, temporary upgrade pay must be reported to CalPERS as special compensation when it is earned.

One sampled employee was working as a Supervisor II, salary grade 23, and began working in a temporary upgraded position as a Plant Manager, salary grade 28, on September 4, 2011. The employee received a five percent salary increase for the temporary upgraded position. However, the Agency did not report the temporary upgrade pay to CalPERS.

The other sampled employee was the Assistant Controller and was temporarily assigned to Treasurer-Controller from May 7, 2012, through August 11, 2012, and received a five percent salary increase for the temporary upgrade position. He was permanently appointed to the Treasurer-Controller position on August 13, 2012. The Agency did not report the temporary upgrade pay to CalPERS.

***Criteria:***

Government Code: § 20160, § 20636(a), § 20636(c)(1),

California Code of Regulations: § 571(a)(3)

**Finding 5:** Non-reportable temporary upgrade pay was reported to CalPERS.

***Recommendation:***

The Agency should immediately stop reporting non-reportable temporary upgrade pay as compensation to CalPERS.

OAS recommends CASD deny all non-reportable items of compensation. CASD should make the appropriate adjustments to active and retired member accounts and other areas needing adjustment pursuant to Government Code Section 20160.

***Condition:***

The Agency reported temporary upgrade pay to CalPERS for one employee that was not reportable because it did not meet the definition of reportable compensation. The employee was a Plant Manager, salary grade 28, and was temporarily assigned to a different plant on September 1, 2011, at the same classification and grade level. When the employee was reassigned, he was compensated with a five percent salary increase. The Agency had a policy for waiting six months before reporting temporary upgrade pay. The Agency erroneously reported temporary upgrade pay by increasing the employee’s payrate by five percent beginning in March 2012. California Code of Regulations 571 defines reportable temporary upgrade pay as compensation to employees who are required by their employer or governing board or body to work in an upgraded position or classification of limited duration. Since the employee’s classification and grade did not change, the temporary upgrade pay did not meet the definition of reportable special compensation.

***Criteria:***

Government Code: § 20160, 20636(a), § 20636(c)(6)

California Code of Regulations: § 571(a)(3)

**Finding 6:** Employee hired through a temporary employment agency was not enrolled.

***Recommendation:***

The Agency should implement procedures to review and monitor the number of hours worked in a fiscal year by all employees hired through temporary employment agencies and enroll all eligible employees into CalPERS membership when membership eligibility requirements are met pursuant to Government Code Section 20305.

OAS recommends CASD ensure the Agency implements the recommendations noted above and make all necessary adjustments to active and retired member accounts, if any, pursuant to Government Code Section 20160.

***Condition:***

OAS reviewed individuals working for the Agency through temporary employment agencies and identified one employee who worked in an employer/employee relationship as a receptionist at one of the power plants. OAS found that the employee worked a total of 1,138.50 hours in fiscal year 2010/2011 and 1,826.50 hours in fiscal year 2011/2012, exceeding 1,000 hours on June 6, 2011. The employee was eligible for CalPERS membership pursuant to Government Code Section 20305; however, the Agency did not enroll the employee in CalPERS membership.

***Criteria:***

Government Code: § 20160, § 20305(a)

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**Finding 7:** The Agency's pay schedules did not meet the requirement for a publicly available pay schedule.

***Recommendation:***

The Agency should list all employee payrates on a pay schedule and develop publicly available pay schedules that meet the criteria of California Code of Regulations Section 570.5.

The Agency should work with CASD to determine the impact of this nondisclosure and make the necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

***Condition:***

OAS reviewed the Agency's pay schedules and determined that they did not meet the criteria pursuant to California Code of Regulations Section 570.5. Specifically:

- The publicly available pay schedule did not include a maximum range. The pay schedule contained a minimum range, control point (mid-range), and a footnote stating that salaries could exceed control point by 15 percent.
- The publicly available pay schedules dated January 1, 2012, were not approved by the Agency's governing body in accordance with requirements of applicable public meeting laws. OAS found the Agency's governing body adopted a proposed salary schedule as a component of the adoption of the 2011-2012 annual budget. The annual budget stated that there would be no cost of living adjustment (COLA) or step increases for the Unrepresented Employees. OAS noted that there was a structural change in the January 2012 publicly available pay schedule which increased payrates for Unrepresented Employees. The structural change for Unrepresented Employees was not approved by the governing body.

***Criteria:***

Government Code: § 20049, § 20636(b)(1)

California Code of Regulations: § 570.5

## NORTHERN CALIFORNIA POWER AGENCY

**Observation 1:** The Agency's payrate ranges in the pay schedule were broad.

OAS reviewed the Agency's publicly available pay schedule and noted that when applying the maximum range, the range change from the minimum to the maximum was as low as 15 percent and as high as 130.1 percent with an average of 43.2 percent for the classifications listed. The overly broad pay ranges may cause lack of transparency as to payrates resulting in insufficient information available to the public.

## CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives as outlined in Appendix B. OAS limited the test of transactions to employee samples selected from the agency's payroll records. Sample testing procedures provide reasonable, but not absolute, assurance that these transactions complied with the California Government Code except as noted.

The findings and conclusions outlined in this report are based on information made available or otherwise obtained at the time this report was prepared. This report does not constitute a final determination in regard to the findings noted within the report. The appropriate CalPERS divisions will notify the agency of the final determinations on the report findings and provide appeal rights, if applicable, at that time. All appeals must be made to the appropriate CalPERS division by filing a written appeal with CalPERS, in Sacramento, within 30 days of the date of the mailing of the determination letter, in accordance with Government Code Section 20134 and Sections 555-555.4, Title 2, California Code of Regulations.

Since this review did not include a determination as to whether the Agency's simultaneous enrollment of members in supplemental retirement benefit plans is in compliance with the PERL, this report expresses no opinion or finding with respect to the Agency's enrollment of members in supplemental retirement plans.

Respectfully submitted,

Original Signed by Margaret Junker

MARGARET JUNKER, CPA, CIA, CIDA
Chief, Office of Audit Services

Date: May 2013

Staff: Michael Dutil, CIA, CRMA, Senior Manager
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Jodi Brunner, Auditor
Edward Fama, Auditor
Rachel Stark, Auditor

# APPENDIX A

## BACKGROUND

## BACKGROUND

### California Public Employees' Retirement System

The California Public Employees' Retirement System (CalPERS) provides a variety of programs serving members employed by more than 2,500 local public agencies as well as state agencies and state universities. The agencies contract with CalPERS for retirement benefits, with CalPERS providing actuarial services necessary for the agencies to fund their benefit structure. In addition, CalPERS provides services which facilitate the retirement process.

CalPERS Customer Account Services Division (CASD) manages contract coverage for public agencies and receives, processes, and posts payroll information. In addition, CASD provides services for eligible members who apply for service or disability retirement. In addition, CASD provides eligibility and enrollment services to the members and employers that participate in the CalPERS Health Benefits Program, including state agencies, public agencies, and school districts. CalPERS Benefit Services Division (BNSD) sets up retirees' accounts, processes applications, calculates retirement allowances, prepares monthly retirement benefit payment rolls, and makes adjustments to retirement benefits.

Retirement allowances are computed using three factors: years of service, age at retirement and final compensation. Final compensation is defined as the highest average annual compensation earnable by a member during the last one or three consecutive years of employment, unless the member elects a different period with a higher average. State and school members use the one-year period. Local public agency members' final compensation period is three years unless the agency contracts with CalPERS for a one-year period.

The employer's knowledge of the laws relating to membership and payroll reporting facilitates the employer in providing CalPERS with appropriate employee information. Appropriately enrolling eligible employees and correctly reporting payroll information is necessary to accurately compute a member's retirement allowance.

# APPENDIX B

## OBJECTIVES

# NORTHERN CALIFORNIA POWER AGENCY

## OBJECTIVES

The objectives of this review were limited to the determination of:

- Whether the Agency complied with applicable sections of the California Government Code (Sections 20000 et seq.) and Title 2 of the California Code of Regulations.
- Whether prescribed reporting and enrollment procedures as they relate to the Agency's retirement contract with CalPERS were followed.

This review covers the period of July 1, 2009, through June 30, 2012. Since this review did not include a determination as to whether the Agency's simultaneous enrollment of members in supplemental retirement benefit plans is in compliance with the PERL, this report expresses no opinion or finding with respect to the Agency's enrollment of members in supplemental retirement plans.

## SUMMARY

To accomplish the review objectives, OAS interviewed key staff members to obtain an understanding of the Agency's personnel and payroll procedures, reviewed documents, and performed the following procedures.

✓ Reviewed:
  - Provisions of the Contract and contract amendments between the Agency and CalPERS
  - Correspondence files maintained at CalPERS
  - Agency Committee minutes and Agency Committee resolutions
  - Agency written labor policies and agreements
  - Agency salary, wage and benefit agreements including applicable resolutions
  - Agency personnel records and employee hours worked records
  - Agency payroll information including Summary Reports and CalPERS listings
  - Other documents used to specify payrate, special compensation, and benefits for all employees
  - Various other documents as necessary

✓ Reviewed Agency payroll records and compared the records to data reported to CalPERS to determine whether the Agency correctly reported compensation.

✓ Reviewed payrates reported to CalPERS and reconciled the payrates to Agency public salary records to determine whether base payrates reported were accurate, pursuant to publicly available pay schedules that identify the position title, payrate and time base for each position, and duly approved by the Agency's governing body in accordance with requirements of applicable public meeting laws.

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- ✓ Reviewed CalPERS database to determine whether the payroll reporting elements were reported correctly.
- ✓ Reviewed the Agency’s enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the Agency’s enrollment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when 960 hours were worked in a fiscal year.
- ✓ Reviewed the Agency’s independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the Agency’s affiliated entities to determine if the Agency shared employees with an affiliated entity and if the employees were CalPERS members and whether their earnings were reported by the Agency or by the affiliated entity.
- ✓ Reviewed the Agency’s calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.

# APPENDIX C

## AGENCY'S RESPONSE

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Michael F. Dean
Attorney at Law
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A Commitment to Public Law

May 2, 2013

**Via E-mail and U.S. Mail**

Ms. Margaret Junker, CPA, CIA, CIDA
Chief, Office of Audit Services
California Public Employees' Retirement System
P.O. Box 942701
Sacramento, CA 94229-2701

**Re: CalPERS Draft Public Agency Review of Northern California Power Agency Employer Code 1821**

Dear Ms. Junker:

The undersigned is the General Counsel for the Northern California Power Agency ("NCPA"). Your letter of April 10, 2013 addressed to Lynn Bianchi-Rossi, the Human Resources Director of NCPA, and the draft Public Agency Review transmitted by that letter, were referred to me for reply.

NCPA has reviewed the observations, statements, conclusions, and recommendations contained in the draft Public Agency Review (the "Review") dated April 10, 2013. Thank you for allowing NCPA to investigate these matters and to provide our comments.

NCPA understands that the Review covered the period of July 1, 2009 through June 30, 2012. In this communication I will follow the same sequence of risks, mitigation, observations, recommendations and findings as appear in the draft Review.

**Finding 1: Employee's pay rate was underreported.**

Based on the clarifications provided to NCPA by the CalPERS auditor regarding requirements for salary reporting of deferred compensation, NCPA agrees with Finding No. 1.

By way of explanation, total contracted salary was not reported to CalPERS as reportable compensation because a portion of the contracted salary was transferred to a deferred compensation plan (PARS) and was never included as part of the employee's paycheck. The amounts reported to CalPERS were only the amounts paid directly to the employee in the biweekly paychecks. This situation caused the member's total reported compensation to be less than required by CalPERS regulations in the amount of the PARS contribution.

This error caused an underreporting of the employer contributions. However, in our view the member contributions are correct as discussed below.

The member first became a participant in CalPERS after July 1, 1996. As a result, he is subject to Internal Revenue Code limitations on annual compensation that can be taken into account for pension purposes. Because the annual compensation actually reported to CalPERS as reportable compensation exceeded the cap in each of the years under audit, the correct Member contribution was made.

Corrective Action: After NCPA was informed of this error by the CalPERS auditor, the reporting for calendar year 2012 was corrected. Therefore, in 2012 NCPA reported the total contracted salary and has correctly paid both the appropriate Member and employer contributions. Reporting amounts for this employee are now calculated using contracted compensation as required.

As recommended in the Review, NCPA will confirm with the Customer Account Services Division ("CASD") that all necessary adjustments have been completed.

**Finding 2: Pay rates reported to CalPERS were higher than authorized.**

The Review states that only pay rates that are duly approved and adopted by the governing body should be reported. In 2012 the General Manager exceeded the merit increase amount in the NCPA Merit Matrix by .25 percent to 2.75 percet for five employees. The General Manager exceeded the Merit Matrix guidelines because he did not give an increase to one of his direct subordinates; therefore, he exercised his management prerogative to provide extra merit to others who had assumed extra responsibilities. The increases granted were the same amount as budgeted for overall merit increases which had been approved by the governing body through the budget process.

The General Manager made an exception to the amount identified in the Merit Matrix, but did not exceed the amount included in the budget for salary increases as approved by the governing body. While NCPA disagrees with Finding No. 2, we will nevertheless take action as noted below.

Corrective Action: The General Manager will report and receive approval by the governing body for future salary increase exceptions to the extent they exceed the amount in the Merit Matrix or the amount in the approved budget. NCPA will consult with CASD to determine the differential of the above reporting to ensure that all required adjustments are made to Members' accounts pursuant to Government Code section 20160.

**Finding 3: Holiday pay was not reported.**

Based on the clarifications provided to NCPA by the CalPERS auditor regarding requirements for reporting statutory holiday pay, NCPA agrees with Finding No. 3.

Based on the original reporting instructions from 2002 when NCPA joined CalPERS, NCPA has regularly reported base pay and special compensation (which included shift pay and merit bonuses) to CalPERS. It was NCPA's understanding that only regular pay types should be reported. Holiday pay under NCPA payroll classifications is considered overtime, and therefore was not reported to CalPERS.

Because of the 24/7 work coverage requirements in various NCPA facilities, holidays are regularly scheduled work days for a limited number of NCPA employees. NCPA now understands that the positions that require staffing regardless of holidays and which receive compensation for holiday pay should no longer be considered overtime and should be reported to CalPERS.

Corrective Action: NCPA will henceforth treat holiday pay as reportable special compensation for its employees, and will confirm with CASD that all required adjustments have been implemented.

**Finding 4: Reportable temporary upgrade pay was not reported to CalPERS.**

NCPA was not aware that temporary upgrades should be reported to CalPERS immediately.

Employees receiving a temporary upgrade are made aware in advance of receiving the upgrade that NCPA reports such upgrades to CalPERS for pension calculations only after the upgrade has been in effect for six months. This practice has been in effect since a 2007 agreement with the International Brotherhood of Electrical Workers, and has been applied to all bargaining units and unrepresented employees. This practice has been consistently followed since its inception.

In NCPA's view the temporary upgrade policy is transparent and all employees are treated similarly. However, NCPA does not contest Finding No. 4.

Corrective Action: NCPA's practice will either be memorialized in writing, or NCPA may eliminate it and return to hourly reporting of temporary upgrades. Irrespective of NCPA's policy decision, NCPA will confirm with CASD that all appropriate adjustments have been completed.

**Finding 5: Non-reportable temporary upgrade pay was reported to CalPERS.**

NCPA reported the upgrade pay for a plant manager who was asked to relocate to another plant due to the unexpected retirement of another manager. To incentivize this individual to relocate, as well as to assume construction management of a new power plant, he was offered an additional 5 percent in base pay. This assignment became a permanent assignment and this individual retained the 5 percent incentive pay. NCPA disagrees with Finding No. 5 to the extent that the pay was not properly reported. However, instead of reporting it as temporary upgrade pay, his pay increase may be more appropriately classified as special compensation "Management Incentive Pay" due to the unique nature of this assignment.

Corrective Action: NCPA will monitor that only promotions are reported as temporary upgrade pay. NCPA will also consult with CASD to ensure that all necessary adjustments are implemented.

**Finding 6: Employee hired through a temporary agency was not enrolled.**

The employee in question was furnished through a temporary employment agency. The terms of the employee's contract with that agency were unknown to NCPA. The employment agency tracked the employee's time worked and paid the employee, withheld taxes, and may have provided benefits. The temporary employment agency then billed NCPA at a contracted rate for time worked.

NCPA was not aware that employees on temporary assignments employed by another company should be enrolled in CalPERS when they reach 1,000 hours. The employee was not an NCPA employee, was not included in the NCPA personnel/payroll system, and was unknown to the payroll staff. NCPA was unaware that non-agency employees could be eligible for CalPERS retirement benefits. While NCPA has systems to track part-time, non-benefited employee hours to ensure proper enrollment in CalPERS retirement upon qualification, there is no NCPA procedure to screen temporary employment agency employees for prior CalPERS membership or to track time worked for possible CalPERS enrollment.

Corrective Action: NCPA will implement procedures to review and monitor the number of hours worked in a fiscal year by all employees hired through temporary employment agencies and will enroll all eligible employees into CalPERS membership when membership eligibility requirements are met pursuant to Government Code section 20305. Further, NCPA will consult with CASD with respect to the individual at issue.

**Finding 7: The Agency's pay schedules did not meet the requirement for a publicly available pay schedule.**

California Code of Regulations, title 2, section 570.5 contains criteria for ensuring that a public agency's pay schedule is publicly available and does not permit reference to another document. The posted NCPA salary structure showed the salary ranges for each position, indicating the minimum and control point. It also stated in the footnote that the maximum pay rate could be up to 15 percent above the control point for high-performing employees who receive merit increases. NCPA's three-tier pay structure (including the maximum) was available for public review, and NCPA operated on the understanding that this complied with the law. To the contrary, the Review concludes that NCPA was out of compliance and that the maximum rate or range must be shown as a finite amount.

In addition to its comments relating to the inclusion of a maximum rate or range, the Review also states that the NCPA pay schedules were not approved by the Agency's governing body (the NCPA Commission) "… in accordance with requirements of applicable public meeting laws." The Review mentions no basis on which to conclude that the Ralph M. Brown Act (Govt. Code §54950 et seq., which is the applicable "public meeting law") has ever been violated. Instead, the Review cites only two definitional sections of the Public Employees Retirement Law (Govt. Code § 20049, relating to the definition of "labor policy or agreement", and Govt. Code § 20636(b)(1), relating to the definition of the term "pay rate"). This portion of the Finding is unsupported by any evidence and is incorrect as a matter of law.

NCPA's budget, in which these pay schedules were embedded, was provided to the NCPA Commission for approval and included amounts sufficient to implement the base pay, increases, and adjustments to the salary structure for any cost of living, overtime, temporary help or other personnel costs. The budget notes indicate that NCPA does not provide "cost of living" adjustments or step increases for Unrepresented Employees. However, the Merit Matrix is adjusted each year by a wage inflation or cost of living adjustment, and the salary structure is also adjusted to maintain NCPA's market position in the labor market. Unrepresented Employees may receive a "merit increase" based on the Merit Matrix, with the decision based upon their past performance. Across-the-board cost of living increases are not provided. This salary structure has been approved by the NCPA Commission and its costs are included in the budget each year when presented to the NCPA Commission. All meetings were noticed and held in accordance with the Brown Act.

Corrective Action: Although NCPA does not agree with Finding No. 7, in January 2013 the pay schedule was posted on the NCPA website and the maximum pay rate amount was shown as a definite amount per CalPERS' instruction. NCPA will also ensure that all pay schedules are publicly available and approved by its governing body and properly documented consistent with applicable statutes. In the 2014 budget (approved by the NCPA Commission in April, 2013 for the period July 2013 to June 2014), NCPA included both the pay structure for 2013 and that for 2014 so that it was more apparent to the NCPA Commission that the pay structures were being revised for wage inflation. Further, the adopting resolution for the 2014 budget was revised from prior years so that the NCPA Commission takes express action to approve that pay structure, rather than relying solely upon the overall budget approval.

**Observation 1: The Agency's pay rate ranges in the pay schedule were broad.**

Previously NCPA had negotiated with its unions to reduce the number of job classifications and to have its employees develop multiple skill sets. This required broad pay ranges to accommodate, for example, an entry level apprentice progressing through various skill sets to the top step at the lead/foreman level, a practice commonly referred to as "broadbanding." While NCPA disagrees with the Review's observation, NCPA has taken steps to meet the stated concern for greater transparency.

Corrective Action: NCPA notes that the definition of "broad" is subjective, and that the Review represents a perspective that the range utilized by NCPA was simply too broad. Reasonable persons could disagree regarding this. Nonetheless, in 2012 NCPA staff re-negotiated pay ranges with its employees. There are now three salary ranges which replace each of the prior single broadbanded ranges. The salary range does not exceed 40 percent from minimum to maximum.

Finally, we look forward to working with CalPERS regarding its factual and legal analysis of whether simultaneous enrollment in supplemental retirement benefits complies with the Public Employees' Retirement Law.

Thank you for your careful consideration of this response to the draft Public Agency Review of the Northern California Power Agency. As set forth above, NCPA has identified corrective actions it has or will implement to address the issues identified in the April 10, 2013 Review.

Very truly yours,

Michael F. Dean

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General Counsel

MFD:JE
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