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# Commission Staff Report

AGENDA ITEM NO.: 16

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**Date:** March 24, 2011  
**To:** NCPA Commission  
**Subject:** Western GeoPower Amended and Restated Power Purchase Agreement,  
New Third Phase Agreement and Existing Third Phase Termination Agreement

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## Proposal

Approve:

- 1) Amended and Restated Power Purchase Agreement (PPA) with Western GeoPower Inc. (WGI)
- 2) Third Phase Agreement to purchase energy, capacity and renewable attributes from WGI's proposed 28 MW net power plant at the Geysers
- 3) Termination Agreement terminating the Third Phase Agreement that currently exists for the Project

## Background

On May 16, 2008, NCPA entered into a "take-and-pay" Power Purchase Agreement (PPA) with Western GeoPower Inc. (WGI) to purchase energy, capacity and renewable attributes from its proposed 35 MW geothermal power plant at the Geysers for a 20-year term at \$98/mwhr flat. The subsequent economic recession, financing costs and increased construction costs created enough economic pressure that WGI was no longer able to develop the Project at the \$98 price point. Over the course of many months of negotiations with Ram Power, parent company of WPI, new PPA terms have been agreed to and NCPA members Santa Clara, Roseville, Palo Alto, Lompoc and the Port of Oakland have agreed to take the energy, capacity and renewable attributes from the Project for a 25-year term at \$113/mwhr flat commencing at the commercial operation date for the Project presently scheduled for October of 2013.

In order to facilitate moving forward with this revised PPA, an Amended and Restated Power Purchase Agreement has been developed. The amended PPA has been updated to include the new business terms and conditions including; NCPA to act as Scheduling Coordinator; option language for NCPA's right of first offer to purchase the plant should WGI decide to sell the Project, and language addressing NCPA's right to take over operations in the event of a default by WGI as defined in the Agreement. In addition, a new Third Phase Agreement (TPA) has been developed for the Project. In order for the new TPA to be executed, it is necessary that the existing TPA be terminated by the participants to that TPA. To that end, a Termination Agreement has been drafted for the original project participants to execute.

## Fiscal Impact

The PPA with WGI is a "take-and-pay" contract requiring the Project participants to only pay the contract price for energy and renewable attributes actually delivered by WGI, except in the rare circumstance where NCPA, as Scheduling Coordinator for the Project, opts to curtail Project output to

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avoid CAISO charges when market prices turn negative, and Project participants are still required to pay the contract price for energy that could have been delivered except for the curtailment.

First energy delivered from the Project is not expected until FY 2014. WGI is bearing all development costs for the Project and as such, there are no cost impacts to NCPA or the members for entering into this PPA.

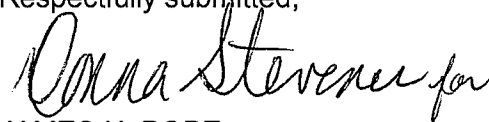
### Environmental Analysis

Sonoma County Permit and Resource Management Department took the lead in conducting the CEQA review for the Western Geo project. On July 9, 2009, Sonoma County Permit and Resource Management Department adopted a Mitigated Negative Declaration for the Western Geo Project. The Western Geo geothermal project will be constructed and financed by the developer. NCPA has no discretionary authority over the operations or the plant. Rather, the "Project" under consideration by the Commission for purposes of CEQA is the approval of a power purchase agreement to purchase power from the geothermal Project. CEQA contains an exemption known as the "common sense" exemption, which states that "[where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." (CEQA Guidelines, sec. 15061(b)(3); see also *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372.). The purchase of geothermal power involves only the transfer of power from the geothermal projects into the power grid and will not, in and of itself, cause any significant adverse impacts to the environment. To the contrary, the purchase of geothermal power will likely have a net benefit to the environment since it will likely displace the need to generate "dirtier" forms of energy.

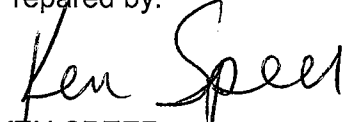
### Recommendation

Staff recommends the Commission approve Resolution 11-03 authorizing the General Manager, or his designee, to execute the Amended and Restated Power Purchase Agreement with WGI, the associated Third Phase Agreement and the Third Phase Termination Agreement on behalf of NCPA with any non-substantial changes as approved by the NCPA General Counsel, and direct the General Manager to forward the final form of the Power Purchase Agreement to WGI for approval and execution, the final form of the Third Phase Agreement to the participating NCPA members for approval and execution, and the final form of the Third Phase Termination Agreement to the participating NCPA members of the original WGI PPA for approval and execution.

Respectfully submitted,

  
JAMES H. POPE  
General Manager

Prepared by:

  
KEN SPEER  
Assistant General Manager  
Generation Services

MG/KS/dg

Attachments (4):

Resolution

Amended and Restated Power Purchase Agreement between NCPA and WGI

Third Phase Agreement for WGI Geothermal Project Renewable Energy PPA

Third Phase Termination Agreement

RESOLUTION 11-03

RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY  
APPROVING THE WESTERN GEOPOWER AMENDED AND RESTATED  
POWER PURCHASE AGREEMENT, NEW THIRD-PHASE AGREEMENT AND  
EXISTING THIRD PHASE TERMINATION AGREEMENT  
(reference Staff Report #107:11)

WHEREAS, NCPA and the member participants are interested in obtaining additional green, renewable energy for the benefit of the participants' customers and to comply with renewable portfolio and carbon emission standards; and

WHEREAS, NCPA had previously entered into a Power Purchase Agreement (PPA) with Western GeoPower Inc. (WGI) to acquire such green, renewable energy from its Geysers Project for a term of twenty (20) years at a price of \$98/MWh; and

WHEREAS, due to extenuating economic pressures, WGI is unable to perform under the business terms of the existing PPA; and

WHEREAS, in order for the Project to go forward, both NCPA and WGI have agreed to a new term of twenty-five (25) years at a price of \$113/MWh; and

WHEREAS, an Amended and Restated Power Purchase Agreement between NCPA and WGI has been drafted to reflect the new contract terms and conditions; and

WHEREAS, a new participating member Third Phase Agreement has been drafted to reflect the new terms of the PPA and to update the member participant list; and

WHEREAS, a Third Phase Termination Agreement has been drafted to terminate the original and existing Third Phase Agreement; and

WHEREAS, Sonoma County has conducted the necessary CEQA Study and adopted a Mitigated Negative Declaration for the Project. NCPA, as a buyer of energy from the Project, is not required to perform a CEQA review; and

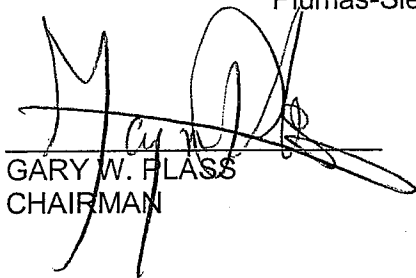
NOW, THEREFORE, BE IT RESOLVED, that the NCPA Commission authorizes the General Manager, or his designee, to execute the Amended and Restated Power Purchase Agreement with WGI, the associated Third Phase Agreement and the Third Phase Termination Agreement on behalf of NCPA with any non-substantial changes as approved by the NCPA General Counsel, and direct the General Manager to forward the final form of the Power Purchase Agreement to WGI for approval and execution, the final form of the Third Phase Agreement to the participating NCPA members for approval and execution, and the final form of the Third Phase Termination Agreement to the participating NCPA members of the original WGI PPA for approval and execution.

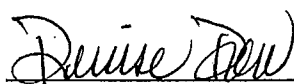
PASSED, ADOPTED and APPROVED this 24th day of March 2011, by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	<u>Y</u>	_____	_____
BART	<u>Y</u>	_____	_____
Biggs	_____	<u>X</u>	_____

Gridley  
 Healdsburg  
 Lodi  
 Lompoc  
 Palo Alto  
 Port of Oakland  
 Redding  
 Roseville  
 Santa Clara  
 Truckee Donner  
 Turlock  
 Ukiah  
 Plumas-Sierra

		X	
Y			
Y	Y		
Y			
Y	Y		
Y			
		X	
Y			
Y			
			X
			X
		X	
			X

  
 GARY W. FLASS  
 CHAIRMAN

ATTEST:   
 DENISE DOW  
 ASSISTANT SECRETARY