



Commission Staff Report

October 10, 2016

COMMISSION MEETING DATE: October 27, 2016

SUBJECT: Approval of the Sixteenth Supplemental Indenture of Trust to Amend the Geothermal Project Number 3 Indenture of Trust

AGENDA CATEGORY: Consent

FROM:	Donna Stevener	METHOD OF SELECTION:
	Asst. General Manager/CFO	N/A
Division:	Administrative Services	
Department:	Accounting & Finance	

IMPACTED MEMBERS:			
All Members	<input type="checkbox"/>	City of Lodi	<input checked="" type="checkbox"/>
Alameda Municipal Power	<input checked="" type="checkbox"/>	City of Lompoc	<input checked="" type="checkbox"/>
Bay Area Rapid Transit	<input type="checkbox"/>	City of Palo Alto	<input checked="" type="checkbox"/>
City of Biggs	<input checked="" type="checkbox"/>	City of Redding	<input type="checkbox"/>
City of Gridley	<input checked="" type="checkbox"/>	City of Roseville	<input checked="" type="checkbox"/>
City of Healdsburg	<input checked="" type="checkbox"/>	City of Santa Clara	<input checked="" type="checkbox"/>
		City of Ukiah	<input checked="" type="checkbox"/>
		Plumas-Sierra REC	<input checked="" type="checkbox"/>
		Port of Oakland	<input type="checkbox"/>
		Truckee Donner PUD	<input type="checkbox"/>
		Other	<input checked="" type="checkbox"/>
			<input type="checkbox"/>
		Turlock Irrigation District	
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RECOMMENDATION:

Staff recommends approval of Resolution 16-75 which amends the Geothermal Bond Indenture to reflect the current project participation and future removal of the City of Palo Alto from the project in accordance with Amendment Two to the Agreement for Construction, Operation and Financing of Geothermal Generating Project Number 3, changes the deadline for submission of annual financial reports to 270 days from 120 days to match continuing disclosure requirements and removes the requirement for a special Accountant's Certificate regarding bond covenant defaults.

BACKGROUND:

On April 1, 2011, NCPA participants in the Geothermal project executed Amendment Number Two (Amendment) to the "Agreement for Construction, Operation and Financing of Geothermal Generating Project Number 3", also known as the Geothermal Third Phase Agreement (Agreement). The Amendment reflects the terms of various transfer agreements between project participants and Turlock Irrigation District (TID) and added TID as a signatory to the Agreement. Under the Amendment, project participants who transferred shares to TID remain liable for all payment obligations under the Agreement until such time as the 2009A Geothermal bonds are no longer outstanding (July 1 2019). In order to reflect the Amendment to the Agreement within the Geothermal Indenture of Trust dated November 1, 1983, our bond counsel recommended that the bond indenture be amended using a "supplemental indenture of trust", which will require approval of two-thirds of the outstanding bondholders for the Geothermal bonds.

On September 23, 2016, the Commission approved a bond refunding for the Geothermal project 2009A bonds via issuance of the 2016 Refunding Series A bonds through a direct loan with the Bank of America. After closing of this bond deal on October 6th, Bank of America became the sole bondholder of outstanding 2012 Series A and 2016 Series A Geothermal bonds. Therefore, with the consent of Bank of America as holders of all of the 2012 Series and 2016 Series bonds, NCPA is able to make desired amendments to the bond indenture, which become effective upon redemption of the 2009A Series bonds (July 1, 2019) which are held by various other bondholders.

The proposed amendments to the Indenture of Trust are reflected in the Sixteenth Supplemental Indenture and include the following:

- Amend Section 1010 to add references to Amendments Number One and Two to the Agreement for Construction, Operation and Financing of Geothermal Generating Project Number 3. This will clarify the participation in the project and modify the indenture so revised participation percentages in the project are reflected in the bond indenture after July 1, 2019.
- Amend Section 715. Accounts and Reports is amended to provide for 270 days to submit required audited financial statements versus 120 days in the original 1983 indenture (this will line up due dates for filing the annual audit with dates in the Continuing Disclosure Agreements for the 2009A bonds).

- Amend Section 715 Accounts and Reports to delete the last sentence in section 3 as follows: "Such Accountant's Certificate shall state whether or not, to the knowledge of the signer, NCPA is in default with respect to any of the covenants, agreements or conditions on its part contained in the Indenture of Trust, and if so, the nature of such default.

FISCAL IMPACT:

This amendment is for clarification of language only. There is no fiscal impact to NCPA.

ENVIRONMENTAL ANALYSIS:

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

COMMITTEE REVIEW:

The recommendation was reviewed by the Finance Committee on October 19th and was unanimously recommended for Commission approval with X members present.

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments:

SIXTEENTH SUPPLEMENTAL
INDENTURE OF TRUST

between

NORTHERN CALIFORNIA POWER AGENCY

and

U.S. BANK NATIONAL ASSOCIATION, as TRUSTEE

Dated as of November 1, 2016

SIXTEENTH SUPPLEMENTAL INDENTURE OF TRUST

This **SIXTEENTH SUPPLEMENTAL INDENTURE OF TRUST**, made and entered into as of November 1, 2016, by and between Northern California Power Agency, a joint exercise of powers agency established pursuant to the laws of the State of California (“NCPA”), and U.S. Bank National Association, a national banking association, incorporated under the laws of the United States of America and authorized to accept and execute trusts of the character herein set out, with its principal corporate trust office located at 100 Wall Street, New York, New York, as successor trustee (the “Trustee”);

W I T N E S S E T H:

WHEREAS, NCPA has heretofore entered into an Indenture of Trust, dated as of November 1, 1983 (the “Original Indenture of Trust”), as supplemented and amended by the First Supplemental Indenture of Trust, dated as of November 1, 1983 (the “First Supplemental Indenture of Trust”), the Second Supplemental Indenture of Trust, dated as of October 1, 1984 (the “Second Supplemental Indenture of Trust”), the Third Supplemental Indenture of Trust, dated as of October 1, 1985 (the “Third Supplemental Indenture of Trust”), the Fourth Supplemental Indenture of Trust, dated as of November 1, 1986 (the “Fourth Supplemental Indenture of Trust”), the Fifth Supplemental Indenture of Trust, dated as of January 30, 1987 (the “Fifth Supplemental Indenture of Trust”), the Sixth Supplemental Indenture of Trust, dated as of May 1, 1993 (the “Sixth Supplemental Indenture of Trust”), the Seventh Supplemental Indenture of Trust, dated as of September 1, 1994 (the “Seventh Supplemental Indenture of Trust”), the Eighth Supplemental Indenture of Trust, dated as of April 1, 1996 (the “Eighth Supplemental Indenture of Trust”), the Ninth Supplemental Indenture of Trust, dated as of April 1, 1996 (the “Ninth Supplemental Indenture of Trust”), the Tenth Supplemental Indenture of Trust, dated as of April 1, 1996 (the “Tenth Supplemental Indenture of Trust”), the Eleventh Supplemental Indenture of Trust, dated as of August 1, 1998 (the “Eleventh Supplemental Indenture of Trust”), the Twelfth Supplemental Indenture of Trust, dated as of August 1, 1998 (the “Twelfth Supplemental Indenture of Trust”), the Thirteenth Supplemental Indenture of Trust, dated as of March 1, 2009 (the “Thirteenth Supplemental Indenture of Trust”), the Fourteenth Supplemental Indenture of Trust, dated as of September 1, 2012 (the “Fourteenth Supplemental Indenture of Trust”) and the Fifteenth Supplemental Indenture of Trust, dated as of October 1, 2016 (the “Fifteenth Supplemental Indenture of Trust”), each by and between NCPA and the Trustee, to provide for the securing of Bonds; and

WHEREAS, NCPA, together with the Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Roseville, Santa Clara and Ukiah, the Plumas Sierra Rural Electronic Cooperative, and the Turlock Irrigation District, entered into the Amendment Number Two to Agreement for Construction, Operation, and Financing of Geothermal Generating Project Number 3 (the “Agreement Amendment”) dated as of April 1, 2011; and

WHEREAS, NCPA desires to amend the Original Indenture of Trust to ensure the terms of the Agreement Amendment are reflected therein; and

WHEREAS, the 2009 Series A Bonds, the 2012 Series A Bonds, and the 2016 Series A Bonds are currently the only Series of Bonds outstanding under the Original Indenture of Trust; and

WHEREAS, the 2009 Series A Bonds will no longer be Outstanding as of July 1, 2019; and

WHEREAS, the written consent of all Holders of the 2012 Series A Bonds and the 2016 Series B Bonds have been obtained and delivered;

**NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, THIS
SIXTEENTH SUPPLEMENTAL INDENTURE OF TRUST WITNESSETH:**

That, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created and originally created by the Original Indenture of Trust, the mutual covenants herein contained and in order to secure the payment of the principal of, Redemption Price, if any, and interest on the Bonds according to their tenor and effect, and the performance and observance by NCPA of all the covenants and conditions herein and therein contained on its part to be performed, it is agreed by and between NCPA and the Trustee as follows:

ARTICLE I

AUTHORITY AND DEFINITIONS

101. Supplemental Indenture of Trust. This Sixteenth Supplemental Indenture of Trust is supplemental to the Original Indenture of Trust as heretofore amended and supplemented.

102. Authority for the Sixteenth Supplemental Indenture of Trust. This Sixteenth Supplemental Indenture of Trust is adopted (i) pursuant to the provisions of Article 4 of the Act and (ii) in accordance with Article II, Article X, and Article XI of the Original Indenture of Trust.

103. Definitions.

(a) Except as provided by this Sixteenth Supplemental Indenture of Trust, all terms which are defined in Section 101 of the Original Indenture of Trust, Section 103 of the First Supplemental Indenture of Trust, Section 103 of the Second Supplemental Indenture of Trust, Section 103 of the Third Supplemental Indenture of Trust, Section 103 of the Fourth Supplemental Indenture of Trust, Section 103 of the Fifth Supplemental Indenture of Trust, Section 103 of the Sixth Supplemental Indenture of Trust, Section 103 of the Seventh Supplemental Indenture of Trust, Section 103 of the Eighth Supplemental Indenture of Trust, Section 103 of the Ninth Supplemental Indenture of Trust, Section 103 of the Tenth Supplemental Indenture of Trust, Section 103 of the Eleventh Supplemental Indenture of Trust, Section 103 of the Twelfth Supplemental Indenture of Trust, or Section 103 of the Thirteenth Supplemental Indenture, shall have the same meanings, respectively, in this Sixteenth Supplemental Indenture of Trust as such terms are given in said Section 101 of the Original Indenture of Trust, Section 103 of the First Supplemental Indenture of Trust, Section 103 of the

Second Supplemental Indenture of Trust, Section 103 of the Third Supplemental Indenture of Trust, Section 103 of the Fourth Supplemental Indenture of Trust, Section 103 of the Fifth Supplemental Indenture of Trust, Section 103 of the Sixth Supplemental Indenture of Trust, Section 103 of the Seventh Supplemental Indenture of Trust, Section 103 of the Eighth Supplemental Indenture of Trust, Section 103 of the Ninth Supplemental Indenture of Trust, Section 103 of the Tenth Supplemental Indenture of Trust, Section 103 of the Eleventh Supplemental Indenture of Trust, Section 103 of the Twelfth Supplemental Indenture of Trust, Section 103 of the Thirteenth Supplemental Indenture of Trust, Section 103 of the Fourteenth Supplemental Indenture of Trust or Section 103 of the Fifteenth Supplemental Indenture of Trust, respectively.

(b) **Rules of Construction.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. Defined terms shall include any variant of the terms set forth in this Article I.

The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms, as used in this Sixteenth Supplemental Indenture of Trust, refer to this Sixteenth Supplemental Indenture of Trust as a whole and not to any particular Article or Section hereof.

ARTICLE II

AMENDMENTS TO THE ORIGINAL INDENTURE OF TRUST

201. The definition of “Project Number 3 Member Agreement” in Section 1010 of the Original Indenture of Trust is hereby amended in its entirety to read as follows:

Project Number 3 Member Agreement shall mean the Agreement for Construction, Operation and Financing of Geothermal Generating Project Number 3, dated as of July 1, 1983, by and among NCPA and the Project Participants as the same has been or may be amended and supplemented from time to time in accordance with its terms and the terms of the Indenture of Trust, including by Amendment Number One to Agreement for Construction, Operation and Financing of Geothermal Generating Project Number 3, dated as of August 1, 1993, by and among NCPA and the Project Participants and by Amendment Number Two to Agreement for Construction, Operation and Financing of Geothermal Generating Project Number 3, dated as of April 1, 2011, by and among NCPA and the Project Participants.

202. Effective as of the first date on which no 2009 Series A Bonds remain outstanding, the references to “120 days” in Section 715 of the Original Indenture of Trust shall be modified to read “270 days.”

203. Effective as of the first date on which no 2009 Series A Bonds remain outstanding, the subsection 3 of Section 715 of the Original Indenture shall be modified by deleting the final sentence of such subsection 3.

ARTICLE III

MISCELLANEOUS

301. Indenture of Trust to Remain in Effect. Save and except as heretofore amended and supplemented and as amended and supplemented by this Sixteenth Supplemental Indenture of Trust, the Indenture of Trust shall remain in full force and effect.

302. Counterparts. This Sixteenth Supplemental Indenture of Trust may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same instrument.

303. Effective Date of the Sixteenth Supplemental Bond Indenture. This Sixteenth Supplemental Indenture shall be effective in accordance with Section 1102 and 1103 of the Original Indenture of Trust.

IN WITNESS WHEREOF, Northern California Power Agency has caused these presents to be signed in its name and on its behalf by its General Manager and to evidence its acceptance of the trusts hereby created, the Trustee has caused these presents to be signed in its name and on its behalf by one of its authorized officers, all as of the first day of November, 2016.

NORTHERN CALIFORNIA POWER AGENCY

By: _____

Name: Donna I. Stevener

Title: Assistant General Manager, Finance and
Administrative Services and Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION, as
Trustee

By: _____

Authorized Officer

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