



# CITY OF LODI

## COUNCIL COMMUNICATION

AGENDA TITLE: Power Supply Contract between the City of Lodi and Pacific Coast Producers, Inc.

MEETING DATE: January 21, 1998

SUBMITTED BY: Electric Utility Director

**RECOMMENDED ACTION:** That the City Council authorize the City Manager to approve the attached Power Supply contract between the City of Lodi (City) and Pacific Coast Producers, Inc. (PCP).

**BACKGROUND:** PCP is in the process of extensively upgrading its Tokay Street facility and has asked if there was a means by which it could achieve a reduction in electric power costs through rearrangement of its distribution system.

After investigating required facility modifications with PCP, the Electric Utility Department has determined that by changing PCP's receipt voltage to primary service (12,000 volts), PCP would be eligible for a lower cost electric rate. However, PCP would have to own the associated transformers. Moreover, the transformer changeover would also have to be done in conjunction with the PCP's currently planned internal facility distribution system upgrading. At PCP's request, the Department investigated possible methods of financial assistance by the City.

The Electric Utility Department recommends the following:

1. Existing 4,000 volt to 12,000 volt transformer and equipment upgrade (\$190,000).  
City to replace existing transformer bank with four new transformers on main service and add one new transformer to second existing transformer bank. Both banks to be primary metered. PCP to own both transformer banks upon completion by City.
2. Facility internal distribution system upgrade (\$361,017).  
PCP will be responsible for completing this extensive upgrade. City to assist PCP by advancing \$261,017 towards upgrade. PCP to contribute remainder of upgrade cost.

The City would be repaid over the seven-year term of the contract through a combination of PCP's assignment to Electric Rate Schedule G5-S and fee assessment. Both PCP and the City gain from the proposed arrangement. PCP gains by receiving immediate assistance in funding and accomplishing extensive facility modifications. The City gains by retaining an important customer.

- FUNDING:**
1. City 4,000 to 12,000 volt transformer and associated equipment upgrade (\$190,000):  
16.0 Electric Utility Fund Reserves
  2. PCP facility internal distribution system upgrade (\$261,017): 16.0 Electric Utility Fund Reserves

Prepared by: John Stone, Manager, Business Planning & Marketing

ANV/JS/lst

c: City Attorney  
Finance Director

Alan N. Vallow  
Electric Utility Director

Funding Approval:

Vicky McAthie, Finance Director

Approved

H. Dixon Flynn  
City Manager

**POWER SUPPLY CONTRACT**

**BETWEEN**

**THE CITY OF LODI**

**AND**

**PACIFIC COAST PRODUCERS, INC.**

This Agreement is made by and between the CITY OF LODI ("City") and PACIFIC COAST PRODUCERS, INC. ("Customer"), collectively called "the Parties" and individually as "Party". This Agreement supersedes the City's assignment to rate schedules for this Customer.

**WITNESSETH:**

**WHEREAS**, City operates an electric utility system supplying electric power to City customers; and

**WHEREAS**, Customer is a manufacturer of food products and associated can products operating in the City; and

**WHEREAS**, Customer is extensively upgrading its facility for continued operation at its present location; and

**WHEREAS**, City desires to supply the Customer's total load and assist the Customer with the required upgrades.

**NOW, THEREFORE**, the Parties hereto agree as follows:

Section 1. Definitions. Whenever used in this Agreement, in either the singular or plural number, the following terms shall have the following respective meanings:

- 1.1 "Agreement" is this contract.
- 1.2 "City" is the City of Lodi, a California Municipal Corporation.
- 1.3 "Customer" is Pacific Coast Producers, Inc.
- 1.4 "Facility" is the Customer's facility located at 32 East Tokay Street, Lodi, California.

- 1.5 "Account" is the Customer's current Facility Account Number 108.00-15.10 or it's successor(s).
- 1.6 "Parties" are collectively Customer and City.
- 1.7 "Billing cycle" is the monthly bill.
- 1.8 "Facilities Surcharge" is an additional fee levied on the Customer to reimburse the City for expenses incurred in the completion of the transformer and facility distribution system upgrades not otherwise covered by the Customer's remaining on Electric Rate Schedule G5-S.
- 1.9 "Force Majeure", as used herein, means unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Party claiming force majeure. Such an occurrence may include, but is not limited to, acts of God, labor disputes, sudden actions of the elements, actions or inactions by federal, state and municipal agencies, and actions or inactions of legislative, judicial, or regulatory agencies.

Section 2. City Assistance to be Provided

- 2.1 The City shall be responsible for completing that portion of the project In Exhibit 1 labeled "City 12kV Upgrade." In addition, the City will advance the Customer \$261,017 towards the Customer's portion of the project labeled "PCP Distribution Upgrade" in Exhibit 1.

Section 3. Warranty and Transfer of Ownership

- 3.1 City shall provide Customer a warranty covering all parts and labor for a period of

one year following completion of the 12kV upgrade portion of the project.

- 3.2 Transfer of ownership of the 12kV upgrade portion of the project from the City to the Customer will be on July 1, 1998.

Section 4. Rate Application

- 4.1 In return for assistance with the required facility upgrades which would otherwise qualify the Customer for Electric Rate Schedule I1, the Customer agrees to remain on Electric Rate Schedule G5-S and to pay a \$3,125.00 surcharge per billing cycle for the term of the Contract.

- 4.2 The account shall be billed a minimum cumulative total of \$ 3,597,000 on Electric Rate Schedule G5-S, not including the California Energy Commission Surtax, for the term of the Agreement. Once the Customer has paid the minimum cumulative total of \$3,597,000, the Customer may elect to be placed on Electric Rates Schedule I1 or may elect for open access on the same basis as offered to other customers of like voltage and class. The \$3,125.00 surcharge per billing cycle shall still be due for the term of the Contract.

- 4.3 The Customer shall have the option to prepay the unpaid portion of the PCP Distribution Upgrade advance of \$261,017 at any time during the term of the agreement. If the Customer decides to exercise the option to prepay, the unpaid portion of the \$261,017 Advance will be computed as follows:

Cumulative amounts paid on Electric Rate Schedule G5-S / \$3,567,000 = Percent Paid

\$261,017 X Percent Paid = Amount Paid To Date

\$261,017 - Amount Paid To Date = Unpaid Portion of \$261,017 Advance

If the PCP Distribution Upgrade advance is prepaid based on the above formulas, Customer may elect to be placed on Electric Rate Schedule I1 or open access on the same basis as offered to other customers of like voltage and class.

- 4.4 The Customer shall also have the option to prepay the unpaid portion of the surcharge of \$3,125.00 per billing cycle by paying the present value of the unpaid payments. The present value of the unpaid payment stream will be computed using the then current Local Agency Investment Fund interest rate plus one-half percent per annum.

Section 5. Term of Agreement

- 5.1 This Agreement shall be binding for a period of 84 months from the date of the last signing by the Parties.
- 5.2 If either party fails to perform any of the provisions of this Agreement, the other party may, by written notice given within thirty days of such failure to perform, terminate this agreement. Customer may appeal such termination in writing to the Electric Utility Director. This is in addition to any other legal recourse Customer may have.
- 5.3 This Agreement cannot be terminated without mutual consent of the Parties.
- 5.4 Parties may mutually extend this Agreement from year to year beyond the original term of this Agreement.

Section 6. Force Majeure

- 6.1 If either Party because of Force Majeure is rendered wholly or partly unable to

perform its obligations under this Agreement, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that:

The non-performing Party, within two weeks after the occurrence of the Force Majeure, shall give the other party a written report describing the particulars of the occurrence.

The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure.

6.2 No obligations of either Party which arose before the occurrence causing the suspension of performance are excused as a result of the occurrence.

6.3 The non-performing Party uses its best efforts to remedy its inability to perform. This sub-paragraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgement of the Party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having the difficulty.

#### Section 7. Assignments

7.1 Neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement without the written consent of the other Party.

#### Section 8. Amendments

8.1 This Agreement may be amended only by written instrument executed by the

Parties or their successors.

Section 9. Severability

9.1 In the event that any of the terms, covenants, or conditions of this Agreement shall be held invalid, the Parties intend that all other terms, covenants, and conditions and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that such provisions are not severable from all other provisions of this Agreement.

Section 10. Governing Law

10.1 This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

Section 11. Counterparts

11.1 This Agreement may be executed in counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 12. Headings

12.1 The headings to the articles in this Agreement are intended for convenience only and not for the purpose of interpreting the provisions of this Agreement.

Section 13. Notices

13.1 Any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party to the other may be so given, tendered or delivered, as the case may be, by depositing the same in any United States Post Office with postage prepaid,

for transmission by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address designated below. Changes in such designation may be made by notice similarly given.

13.2 All written notices or questions shall be directed as follows:

To City:                   ELECTRIC UTILITY DIRECTOR  
  
                                  CITY OF LODI  
  
                                  1331 SOUTH HAM LANE  
  
                                  LODI, CA 95242-3995

To Customer:           PACIFIC COAST PRODUCERS, INC.  
  
                                  631 NORTH CLUFF AVENUE  
  
                                  LODI, CA 95240

Section 14. Non-waiver

14.1 None of the provisions of the Agreement shall be considered waived by either Party except when such waiver is given in writing. The failure of any Party at any time or times to enforce any right or obligation with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to future enforcement of that right or obligation or any right or obligation of the Agreement.

Section 15. Warranty of Authority

15.1 Each of the Parties which has executed and delivered this Agreement represents and warrants that it has agreed to be bound by all the terms, covenants, and conditions of this Agreement and has acted with all the requisite capacity and authority and approval of its governing body.

**IN WITNESS THEREOF**, the Parties have caused this Agreement to be executed by their duly authorized officers and their seal to be affixed, as of the day and year herein written.

**CITY OF LODI, a Municipal Corporation**

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H. Dixon Flynn, City Manager

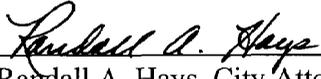
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Date

ATTEST:

\_\_\_\_\_  
Alice M. Reimche, City Clerk

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

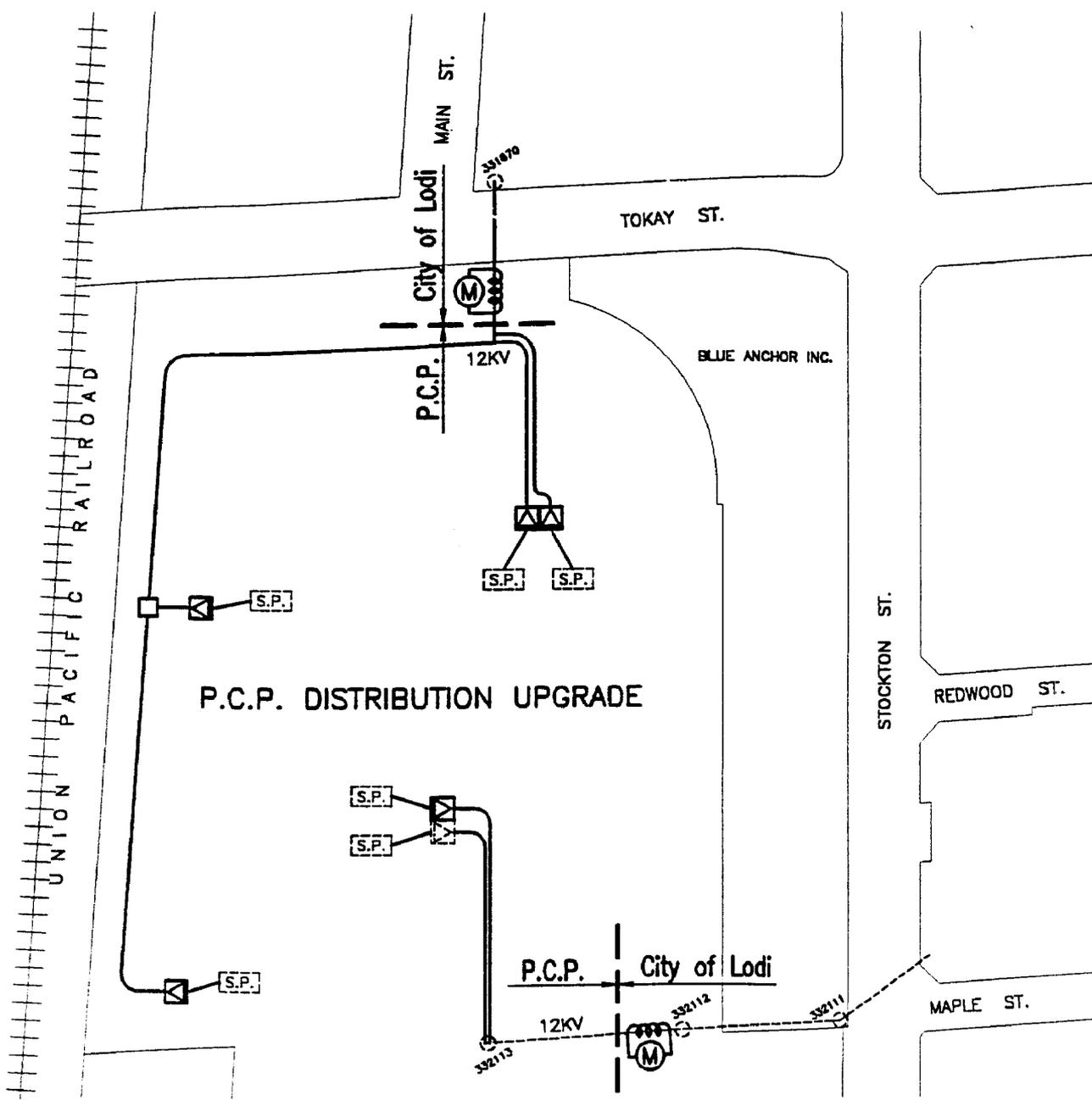
  
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Randall A. Hays, City Attorney

1-13-98  
\_\_\_\_\_  
Date

**PACIFIC COAST PRODUCERS, INC.**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date



CITY 12KV UPGRADE	
	OWNERSHIP DEMARCATION, UPON COMPLETION.
	NEW INSTALLATION
	NEW PRIMARY METERING
	NEW VAULT
	NEW TRANSFORMER
LEGEND	
	EXISTING EQUIPMENT
	EXISTING TRANSFORMER
	P.C.P. SERVICE PANEL
	EXISTING POLE



**EXHIBIT 1**

RESOLUTION NO. 98-13

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING  
THE CITY MANAGER TO APPROVE POWER SUPPLY  
CONTRACT WITH PACIFIC COAST PRODUCERS, INC.

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BE IT RESOLVED, that the Lodi City Council hereby authorizes the City Manager to approve Power Supply Contract with Pacific Coast Producers, Inc.; and

FURTHER RESOLVED, that the City Manager and City Clerk are hereby authorized to execute said contract on behalf of the City.

Dated: January 21, 1998

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I hereby certify that Resolution No. 98-13 was passed and adopted by the Lodi City Council in a regular meeting held January 21, 1998 by the following vote:

AYES: Council Members - Land, Mann, Pennino, Warner and Sieglock  
(Mayor)

NOES: Council Members - None

ABSENT: Council Members - None

ABSTAIN: Council Members - None

  
ALICE M. REIMCHE  
City Clerk