

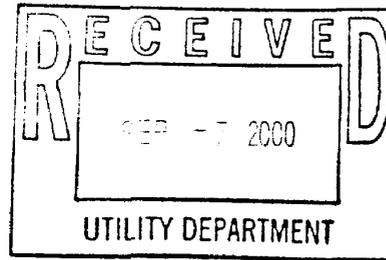


CALPINE

filed 9-12-00 Packet

WESTERN REGION OFFICE
6700 KOLL CENTER PARKWAY
SUITE 200
PLEASANTON, CALIFORNIA 94566
925.600.2000
925.600.8924 (FAX)

September 6, 2000



Mr. Alan Vallow
Electric Utility Director
1331 South Ham Lane
Lodi, California 95242

RE: Merchant Plant MOU

Dear Mr. Vallow:

Please find enclosed two (2) copies of the MOU for the Merchant Plant Project incorporating your suggested changes as discussed this morning on the phone. Please sign and return both copies. Calpine will return to you a signed original.

Upon execution of the MOU, we will immediately begin drafting a Lease Option Agreement. This agreement must be completed and signed in order for Calpine to obtain our internal approvals and move forward with the siting process. We remain excited about this project and look forward to expeditiously moving forward together.

Very truly yours,

Greg Lamberg
Director, Business Development

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made and entered into this ____ day of _____, 2000 by and between the City of Lodi ("City") and Calpine Corporation ("Calpine"), and is made with regard to the following facts and circumstances, among others:

- A. The City owns land adjacent to the White Slough Water Pollution Control Facility ("Site") as described in attachment A which is available to lease to Calpine under a long term lease an amount necessary to accommodate the construction and operation of a merchant power plant (the "Project")
- B. The City is designing and plans to construct an electrical substation to connect Lodi's existing electrical system to one or more of the 230 kV lines owned by Pacific Gas and Electric Company and the Western Area Power Administration which cross the Site.
- C. Calpine desires to enter into a long-term lease with the City for the Site and to design, permit, construct and operate the Project on the Site.
- D. Calpine wishes to obtain exclusive rights to the Site to conduct feasibility, design, and preparation of the Environmental Impact Report, and to achieve authority to construct and finance the Project.
- E. The City may wish to purchase or otherwise acquire, capacity, energy or ancillary services from the Project to enhance the reliability of the City's system.

NOW, THEREFORE, in consideration of the facts recited above and the covenants and conditions contained herein, the parties agree as follows:

1. For the term of this MOU Agreement, City shall negotiate only with Calpine for the sale or lease of the Site for the purposes stated herein. In addition, the City agrees not to develop or support the development of a power plant in excess of 50 MW on City property or within the City limits during the term of this MOU Agreement.

2. Upon the execution of this Agreement and thereafter on each succeeding anniversary date, unless earlier terminated by either party, Calpine shall pay to City twenty-five Thousand dollars (\$25,000).

3. During the term of the MOU, Calpine shall have access to the Site for the purpose of conducting soil testing, environmental surveying or other tasks required for design, permitting and development of a power plant. The results of any testing undertaken by Calpine at the Site shall be provided to City. Calpine shall hold City harmless for any losses suffered by third parties caused by work performed at the Site by Calpine, its employees and agents. Calpine will conduct a detailed Phase 2 environmental analysis for the Site and share with City the results of such study.

4. Calpine shall diligently pursue development of the Project. If Calpine has not completed its Phase 2 environmental analysis for the site within six (6) months from signature of this MOU, the City may terminate this agreement by giving written notice to Calpine. If Calpine has not filed an Application for Certification ("AFC") with respect to the Project at the California Energy Commission ("CEC") within one year from signature of this MOU, the City may terminate this agreement by giving written notice to Calpine. If Calpine has not received positive certification from the CEC within 30

months after signature of this MOU, the City may terminate this agreement by giving written notice to Calpine. Calpine may terminate this agreement at any time upon thirty (30) days advance written notice. Upon termination, by either party, both parties shall be free to pursue similar power plant projects and others in any form with any partner or developer, and neither party shall have any further obligations to the other party. Upon termination by Calpine there shall be no pro rata payment or reimbursement of the consideration paid or payable to City by Calpine.

5. Calpine shall pay all costs and fees required in the development and permitting of the Project. As project proponent, Calpine will reimburse the City's permitting review costs in connection with the CEC process.

6. This MOU does not affect City's rights relative to the agricultural leases in place on the Site at any time or other leases which may exist at the Site.

7. If the current zoning designation of the Site does not allow for a privately-owned power plant, the City and Calpine shall take appropriate action in a timely fashion to ensure that such use of the Site is permitted.

8. The parties shall use reasonable efforts to negotiate a definitive Site Lease based upon but not limited to the following general terms:

- (a) The city will lease an amount of property adjacent to the White Slough Water Pollution Control Plant necessary for the efficient installation and operation of a new combined cycle gas-fired power plant including property necessary for water remediation or retention purposes. The capacity of the plant shall be determined by Calpine. The City will additionally provide all necessary or convenient rights-of-way across City controlled land for linear facilities including but not limited to electrical or gas transmission lines.
- (b) The term of the Lease will be 55 years. Renewal options may be considered.
- (c) The City shall remain responsible for and hold Calpine harmless for all existing environmental contamination at the Site prior to the start of construction. Calpine shall be responsible for and hold City harmless for all environmental contamination, actions and claims arising out of its activities under the Site Lease. Given the proximity of the wastewater plant, the possibility of future City facilities, and the potential for migration of contamination, the parties shall determine what long term monitoring may be necessary to measure any contamination that could be migrating from nearby City facilities to the Site or from the Site to nearby City facilities. The City shall be responsible for any contamination of the Site by migration caused by future activities of its nearby facilities. Calpine shall be responsible for any contamination of surrounding land by migration caused by its activities under the Site Lease.
- (d) A portion of the Site may be reserved for use as a new substation for the City. In such case, Calpine shall grant access to the City for the operation and maintenance of this substation. Both parties expect that designing a single substation to accommodate the interconnection needs of both the Project and the City will have cost savings as compared to two separate facilities. The Parties shall use commercially reasonable efforts to utilize common facilities wherever possible and develop as appropriate, cost sharing agreement related thereto.

(e) If following receipt of its certification and financing, Calpine elects to construct the Project, City shall cancel agricultural leases to its tenant farmers on the Site and Calpine shall reimburse City for payments made to tenant farmers for their cost of planting crops.

(f) This Section 8 contains some but not all of the material terms upon which a lease could be entered into by the Calpine and the City of Lodi. As such, this Section 8, (other than this subsection (f)) shall not be binding upon either Calpine or the City.

9. This MOU may be modified or amended only by an instrument in writing signed by both parties. This MOU shall be binding upon the successors and assigns of the parties. In the event of a dispute, this agreement shall be interpreted fairly according to its terms and not for or against a party based upon the party's role in the preparation of this memorandum under the laws of the State of California.

10. Any notices to be given related to this agreement shall be given as follows:

If to City: _____

If to Calpine: Calpine Corporation
Western Regional Office
6700 Koll Center Parkway
Pleasanton, California 94566
Attention: Business Development
(925) 600-0862 – Fax

Calpine Corporation
50 West San Fernando Street, 5th Floor
San Jose, California 95113
Attention: General Counsel
(408) 975-4648 – Fax

CITY OF LODI, a municipal corporation

CALPINE CORPORATION

H. Dixon Flynn
City Manager

Date: _____

John King
Vice President

Date: _____

ATTEST:

Susan J. Blackston
City Clerk

APPROVED AS TO FORM:

Randall A. Hays
City Attorney