

RESOLUTION NO. 2002-189

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI  
APPROVING THE FORM OF, AND AUTHORIZING THE  
EXECUTION AND DELIVERY OF, AN AMENDMENT TO AN  
ELECTRIC ENERGY PURCHASE AGREEMENT AND  
AUTHORIZING CERTAIN OTHER MATTERS RELATING THERETO

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WHEREAS, the City of Lodi (the "City"), a municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "State"), owns and operates a municipal electric utility system (the "Electric System") providing electric service to the inhabitants of the City; and

WHEREAS, in order to satisfy the electric service requirements of the inhabitants of the City, the City has entered into contracts for the purchase of electric capacity and energy and capacity rights in electric transmission facilities; and

WHEREAS, due to a financial crisis of the investor-owned utilities in the State and a reduction in the amount of electricity available for purchase to serve consumers in the State, the Governor of the State declared a state of emergency and the State, through the Department of Water Resources, commenced purchasing electricity to serve the loads of the customers of the investor-owned utilities; and

WHEREAS, the conditions leading to the Governor's declaring a state of emergency created uncertainty as to whether the City would be able to purchase power in the short-term markets to satisfy the load requirements of the inhabitants of the City; and

WHEREAS, the City, together with certain other members of the Northern California Power Agency ("NCPA"), acting through NCPA, arranged for the purchase of electric energy from Calpine Energy Services, L. P. ("Calpine"), on the terms and conditions of the Western Systems Power Pool Agreement (version effective July 1, 2000) (the "WSPP Terms") and CAISO confirmations which would contain the specific terms of the energy purchase; and

WHEREAS, in order to assure adequate electricity to satisfy the expected load requirements of the inhabitants of the City, the City entered into a long-term, fixed-price electric energy purchase agreement with Calpine consisting of the WSPP Terms and the CAISO Confirmation, dated February 9, 2001, setting forth the amount of electric energy purchased by the City from Calpine (the "Energy"), specifying certain terms and conditions of such purchase and modifying certain provisions of the WSPP Terms (collectively, the "Contract"); and

WHEREAS, pursuant to the Contract, the City is obligated to take and pay for the Energy purchased, resulting in the City's obligation to make installment purchase payments to Calpine in the amounts and at the times determined pursuant to the Contract; and

WHEREAS, since the City entered into the Contract, the State has initiated an electric energy conservation program which has resulted in a reduction of the electric load requirements of retail customers throughout the State, including within the City; and

WHEREAS, since the City entered into the Contract, the State has supported and encouraged, through modifications to the power plant approval process and other means, the construction of new power plants, the repowering of older power plants to increase production and an expansion of the facilities to import power and natural gas into the State from other areas of the United States; and

WHEREAS, the reduction in electric load, the increase of electric production facilities, an increase in the supply of, and reduction in the cost of, natural gas, the regulation of maintenance schedules for power plants and other factors have significantly reduced the demand or the rate of growth of demand for electricity in the State, including the City, and resulted in an increase in the supply, and reduced the cost, of electricity in the short-term markets; and

WHEREAS, as a result of the factors described above and other factors discussed with this City Council, much of the Energy is expected to be sold by the City at prices which the City anticipates will be significantly below the price paid for the Energy by the City; and

WHEREAS, the City has determined that it is in its best economic interests to provide for the sale of the Energy in one transaction rather than selling portions of the Energy in multiple transactions over time; and

WHEREAS, the City has determined that the best economic use by the City of, and the best return to the City for the sale of, the Energy can be achieved by selling the Energy to Calpine in a single transaction; and

WHEREAS, the City has determined to sell the Energy to Calpine on the terms and conditions set forth in an amendment to the Contract denominated Amendment Number One to Electric Energy Purchase Agreement (the "Amendment"); and

WHEREAS, the City and Calpine have agreed upon the purchase price for the Energy purchased by Calpine pursuant to the Amendment and have also agreed to net the payments due from the City for its purchase of the Energy from Calpine against the payments due from Calpine for its purchase of the Energy from the City; and

WHEREAS, the City and Calpine have agreed that the netting of such amounts payable by the respective parties is properly reflected by the City making installment payments (the "Installment Payments") at the times and in the amounts set forth in the Amendment; and

WHEREAS, the Installment Payments are to be paid from available revenues of the City's Electric System; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transactions authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such transactions for the purpose, in the manner and upon the terms herein provided;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LODI, AS FOLLOWS:

Section 1. This City Council hereby specifically finds and determines that the actions authorized hereby constitute and are with respect to the public affairs of the City and that the statements, findings and determinations set forth above and in the preambles of the Amendment approved herein are true and correct. This City Council hereby specifically further finds and determines that the consummation of the transactions contemplated in this Resolution and in the Amendment shall result in significant public benefits to the City in that the City expects to improve the costs and liquidity requirements of the Electric System's operations through sale of the Energy as provided in the Amendment.

Section 2. The Amendment proposed to be executed and entered into by the City and Calpine, in the form presented at this meeting and on file with the City Clerk, and the performance by the City of its obligations thereunder, are hereby approved, and each of the City Manager and the Finance Director (each a "Designated Officer") is hereby severally authorized and directed to execute the Amendment, for and in the name and on behalf of the City, and deliver the Amendment to Calpine. The Amendment shall be in substantially the form presented to this meeting and on file with the City Clerk; provided however the Amendment may also include a pledge of the net revenues of the City's Electric System on a basis consistent with the City's agreements and obligations relating to such net revenues and such other nonsubstantive changes therein as the Designated Officer executing the Amendment may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. The provisions of the Amendment requiring or authorizing the assignment of Calpine's rights to receive the Installment Payments, and certain rights related to the Installment Payments, including without limitation the rights to enforce the payment thereof and the other covenant obligations of the City in connection with the Installment Payments are hereby specifically approved. Such assignment provisions contemplate, and are included in the Amendment to facilitate, third parties obtaining rights and benefits under the Amendment directly through such assignment, through an offering of certificates of participation in the Installment Payments by or on behalf of an assignee, or through some other structure to securitize the cash flow of the Installment Payments. As a result the Amendment constitutes a contract within the meaning of Section 53511 of the Government Code of the State for purposes of Sections 860 and 863 of the Code of Civil Procedure of the State.

Section 4. The City Clerk is hereby authorized and directed to attest the signature of the Designated Officer executing the Amendment on behalf of the City, and to affix and attest the seal of the City thereto, as may be required or appropriate in connection with the execution and delivery of the Amendment.

Section 5. Each appropriate officer, employee or agent of the City is hereby severally authorized and directed to do any and all things and to execute and deliver any and all certificates, documents and instruments which he or she may deem necessary or desirable in order to consummate the transactions authorized hereby and to carry out, give effect to and comply with the terms and intent of this Resolution and the Amendment. All such actions heretofore taken by any officer, employee or agent of the City is hereby ratified, confirmed and approved.

Section 6. This Resolution shall take effect immediately upon its passage.

Date: September 4, 2002  
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I hereby certify that Resolution 2002-189 was passed and adopted by the City Council of the City of Lodi in a regular meeting held September 4, 2002 by the following votes:

AYES: COUNCIL MEMBERS – Hitchcock, Howard, Land, Nakanishi, and Mayor Pennino  
NOES: COUNCIL MEMBERS - None  
ABSENT: COUNCIL MEMBERS – None  
ABSTAIN: COUNCIL MEMBERS - None



SUSAN J. BLACKSTON  
City Clerk

Approved As to Form:



Randall A. Hays  
City Attorney

2002-189