

Salisbury, North Carolina

January 29, 2002

The City Council of the City of Salisbury met in special session in the Council Room of the Municipal Building on Tuesday, January 29, 2002, at 2:30 p.m., with the following members being present and absent:

PRESENT: Mayor, Susan W. Kluttz; Mayor Pro Tem Paul Woodson, Jr.;

Councilmen William (Bill) Burgin; William (Pete) Kennedy,
and Robert (Bob) Martin.

ABSENT: None

The meeting was called to order by Mayor Kluttz, and the invocation was given by City Manager David Treme.

Staff members present were:

David W. Treme - City Manager

Swannetta B. Fink - City Clerk

Rivers Lawther - City Attorney

Foster Owen - Assistant City Manager

Melissa Taylor - Director, Human Resources

John Sofley - Finance Director

Gail Elder White - Director, Parks & Recreation

ASSIGNMENT AND ASSUMPTION AGREEMENT WITH CAROLINA POWER AND LIGHT COMPANY

Mr. John Sofley, Finance Director, informed Council that Carolina Power and Light Company (CP&L) is in the process of spinning off a limited liability corporation from CP&L entitled Rowan County Power Limited Liability Corporation (LLC). CP&L is financing the construction of the project through a bank and they need this documentation in order to proceed with financing of the limited liability corporation, he stated. There is one element that is risky for the City. It does release CP&L from all its obligations and liability and assigns all those to Rowan County Power LLC. This is a new company, which has no revenues and there is an element of risk, Mr. Sofley said. The largest risk the City sees is the actual financing of the construction of the infrastructure and improvements the City is making. Staff has been in contact with CP&L and they informed us that they would not be requesting the City of Salisbury to issue debt to pay for their portion of the project, he said. They would be paying cash for that component, he noted. These payments would be made in 10-12 monthly payments. One of the large concerns initially was that, if the City

actually issued debt, CP&L would be responsible for a component of it. The only way the City would be willing to proceed was that CP&L Corporation would put up a surety bond to guarantee the debt payments, or that a rated credit agency component stand behind the payments. With them paying cash, that concern no longer exists at this point, he noted. The only real concern is whether the City believe Rowan County Power, LLC, a subsidiary of CP&L will, in fact, make those cash payments for the construction. That is the unknown.

Mr. Sofley also informed Council that we will need an agreement with Rowan County Power, LLC that takes the Memorandum of Understanding (MOU) and actually moves it to a subsequent agreement. This would contain the final amount of dollars that the company would be putting in as capital monies, how they are going to pay those, and in what fashion, he stated.

Mayor Pro Tem Woodson asked about the total amount of money being paid. Mr. Sofley noted originally it was \$6.5-7 Million. The project has changed some, costs have gone up, and staff has talked with them about increasing their share of it, he noted.

City Manager Treme shared that CP&L has paid over \$150,000.00. We have \$1-2 Million that has been advanced for the project for engineering, permitting, etc. Before we actually commit to build, they would have to get a bank loan and we would then have access to that money based on an agreement and construction schedule. Mr. Treme told them we need a surety, something rated, or cash. They indicated they would pay cash for the construction, he noted.

Mr. Sofley indicated that staff will be coming back to Council with another agreement between Rowan County Power LLC, the City of Salisbury, and Chase Manhattan Bank. This is a surety agreement that basically puts the bank in a position, if in the future for any reason, the corporation did not perform its duties under any MOU's or agreements that were signed, the bank has the right to come in place of that and perform those duties and assume the obligations, Mr. Sofley stated. City Attorney Lawther noted that is only if they want to. Mr. Treme indicated should they not build the proposed line, the City has the responsibility under agreements with NCDOT, when they widen the road and we are in their right-of-way to remove that line. CP&L was releasing the City from a future obligation of moving that line as NCDOT begins working on Highway 70, he noted. Mr. Treme indicated he has confidence that everything will work out; that CP&L is a reputable group.

Mayor Pro Tem Woodson stated he feels good about it. Councilmember Burgin asked if the new Limited Liability Corporation owned the plant that was built. Mr. Treme replied "yes." So it has assets, Mr. Burgin noted. Mr. Sofley replied "yes." It's not just for buying the line, it's the assets, Mr. Burgin noted. Mr. Sofley replied it will be the plant and its operations, revenues, expenses and a self contained business unit. Mr. Burgin's other question was ultimately when the whole line is finished, does the City have any money in the line? Mr. Sofley replied "some." He asked how much? Mr. Sofley said it could be as much as \$2 Million. For whatever reason, if they decide not to run the plant, (they paid us the \$7Million - that's what it took for us to get the line in and we put in our \$2 Million) because the economy is bad, how do we pay for that \$2 Million that the City put in without having some water revenue, Mr. Burgin asked? Mr. Sofley said we already have water revenue down that corridor. He stated that line has to be moved at the City's expense even if we don't do the CP&L project. NCDOT has already notified the City of this. If we don't go forward with the project, the City will actually owe more than \$2 Million because we would have to put the line in at rate payer expense, Mr. Sofley noted.

Mr. Treme indicated that the City could require them in the assumption agreement to put the money on deposit so that the City could draw on it. Mr. Burgin noted they could be the first money. He indicated he would feel better about it if this was included in the agreement. Mr. Treme stated if this is approved, he would come back to Council with an agreement with CP&L before the City proceeded to the next step, with surety from them that their money is there to pay for the project.

Councilmember Kennedy noted that large corporations do limit their liabilities on one particular project and will create another corporation to deal with that facility. We need to make sure the City doesn't get stuck and not be able to complete the deal.

After a lengthy discussion, Councilmember Burgin made a **motion** to agree to the ASSIGNMENT ASSUMPTION AGREEMENT with Carolina Power & Light. Mr. Kennedy seconded the motion. Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voted AYE. (5-0) A copy of this ASSIGNMENT ASSUMPTION AGREEMENT is attached and made a part of these minutes as fully as if set out herein.

MAYOR ANNOUNCEMENTS

(a) City Manager

Mayor Klutz announced that Council is delighted with the news that City Manager Treme will be remaining with us. We realize how fortunate we are to have him, particularly with his 16 years experience in Salisbury, she noted.

(b) U. S. Conference of Mayors

Mayor Klutz stated she had just returned from the U.S. Conference of Mayors. The Conference centered around September 11, emergency preparedness, and cities lobbying the federal government for monies for emergency preparedness to come directly to cities instead of going through other agencies such as FEMA or the State. She noted she had the opportunity to meet the President and to thank him on behalf of our City for what he did during September 11 and how he handled the situation. Mayor Klutz also heard from former Mayor Giuliani; the NYC police chaplains, Catholic and Islamic; Richard Sheirer, the Director of the Mayor's Office of Emergency Management in New York; and toured ground zero. The message she brought back to Salisbury is as follows:

- they want to make sure that cities realize no religion would condone

what happened September 11

- they want cities to realize the importance of being prepared for emergencies

- they want everyone in our city to be thanked who contributed their time or resources to New York and to what happened there

- they wanted us to make sure that we don't ever take for granted our own police force, fire department, and emergency personnel who risk their lives everyday, just as those who were killed on September 11

Mayor Klutz informed Council that while she was there she invited a New York firefighter to come to Salisbury on March 1-3, 2002. We will be one of 150 cities participating in this program. They will have a lottery and send 150 firefighters all over the country to express their thanks from New York to the different cities and for them to get a chance to see our city and to meet our firefighters, police and emergency personnel, she said.

(c) Catawba College - Livingstone College

Mayor Klutz stated when she returned from New York, she returned to one of our saddest days in our City. Not only was it our second murder this year, but a horrible tragedy for family and for two colleges that are so important to us, she noted. Mayor Klutz asked Council to think about what we can talk about at our retreat; what we can do to help our City heal; and how we can help address the problem. This is not only a problem for two colleges, but it is a problem for our City, she said. The focus the City has had over the last several years on race relations has helped us unite as a community and it will take a united community to make sure this doesn't happen again, she noted.

Councilmember Martin stated we have a responsibility in the City since both of the schools are located in the City of Salisbury. We share the same responsibility as they do. We are going to have to do something to assure them that we are going to be at their side, he noted.

Mayor Pro Tem Woodson stated he had a call today from a citizen who was very concerned that barb wire is being put up around the Courthouse. The citizen noted that we are having trouble here but we don't want our city to look like a prison either, he said. Mr. Woodson indicated this is county property and he rode by and also saw tall metal fences with razor wire being put up around the magistrate's office. Mayor Klutz indicated this could be temporary since we don't have the details at this time.

Councilmember Burgin indicated he also shared Mayor Klutz's sentiments about how important Catawba and Livingstone are to us. We do have to see if we can help. They are assets to us. We have to follow the lead of Catawba and Livingstone to help us understand what the City can do to support them, he noted.

Councilmember Kennedy said we need to keep in mind that these are random acts of certain individuals and do not reflect the student body of Livingstone or Catawba Colleges. Mayor Pro Tem Woodson indicated he was interviewed by the Raleigh News and Observer about the incident and he pointed out to them that we have three excellent colleges (one technical college and two liberal arts colleges) in our town. He also thinks it was a random act that had nothing to do with the schools. Mayor Klutz said she wants the City to know that the Council is very concerned and we will do whatever we can to make sure it doesn't happen again.

ADJOURNMENT

Upon **motion** of Mr. Kennedy, seconded by Mr. Burgin, and with Messrs. Burgin, Kennedy, Martin, Woodson and Ms. Klutz voting AYE, the meeting was adjourned at 3:17 p.m. (5-0)

Mayor

-

City Clerk