



City of Rowlett Meeting Minutes City Council

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Tuesday, December 2, 2008

5:30 PM

Municipal Building - 4000 Main Street

As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item herein.

The City of Rowlett reserves the right to reconvene, recess or realign the Regular Session or called Executive Session or order of business at any time prior to adjournment.

1. CALL TO ORDER

Mayor Harper called the meeting to order at 5:06 p.m.

Excused: Councilmember Phillips

Present: Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

CONVENE INTO EXECUTIVE SESSION

Convened into Executive Session at 5:07 p.m.

2. EXECUTIVE SESSION

2-A The City Council shall convene into executive session pursuant to the TEXAS LOCAL GOVERNMENT CODE, §551.074(a) (1), Personnel, to deliberate the appointment and duties of the City Manager.

2-B The City Council shall convene into executive session pursuant to the TEXAS GOVERNMENT CODE, §551.071 to seek legal advice from the City Attorney and to discuss a proposed agreement with the Cities Aggregation Power Project (CAPP). (10 minutes)

RECONVENE INTO OPEN SESSION

3. WORK SESSION ITEMS (5:30 P.M.)

3-A Update from the Mayor: Financial Position, Major Projects, Operational Issues, Upcoming Dates of Interest. (10 minutes)

This item was not discussed during the Work Session.

3-B Joint Work Session with Animal Shelter Advisory Board. (10 minutes)

Beth Elam, a member of the Animal Shelter Advisory Board, introduced the members of the Board that were in attendance. Spoke regarding the accomplishments of the Board; the Adopt-a-Thon program; the changes in the adoption and redemption fees; the result of the yearly low cost vaccination clinic; and reviewed an Animal Bite Brochure to clarify the City ordinances.

Stated the Board would like for the Facilities Bond Committee to tour the animal shelter and would like to see an item placed on the upcoming bond election for shelter improvements and expansion. Stated because of the increase in service calls, after-hours calls, dead animal pickups and impoundment of animals, there is a need for more staffing and facilities dedicated to meet the expanding size of the City.

Spoke regarding several upcoming discussion items.

Council asked staff about vaccination clinics and customer feedback. Council suggested they should solicit comments from citizens that adopted pets and those that give up pets.

3-C Presentation of Screening Wall Cost, the Condition Assessment Study, and leaning utility poles. (35 minutes)

Council voiced concerns regarding dilapidated screening walls and leaning utility poles.

Staff made a presentation to the Council.

Council asked staff if the City was managing the up righting of the utility poles.

Staff stated they provided a list to Oncor that show where the poles are located and the identification number that is on the poles.

Council asked for ways to leverage the City's money for the screening walls; asked how to go about getting a lot done with the limited resources the City has. Stated a list similar to the CIP Index should work for the screening walls.

Staff asked for direction from Council on a prioritization list. For instance, prioritize the main entrances and work the information into the Capital Improvement Project. Asked for an agreement on what are the priority corridors for screening walls and then staff can create a scheduled/systematic list of those screening walls.

Council stated they would like to see some serious engineering consideration in building a wall that should last more than ten (10) years.

Staff stated the study only addresses the existing screening walls. Staff recommended they go back and put together a list of major corridors that come into the City from the worst screening walls to the best screening walls and create a cost estimate.

Council stated Staff needs to bring back a policy issue as to who will maintain the walls.

This issue will be brought back to Council on February 3, 2009.

- 3-D Update on more than one Proactive Code Enforcement (PACE) sweep per year. (20 minutes)

Council stated being proactive instead of reactive is a positive step. Council asks how does the City can move to the next level and include additional issues to the list. Stated the City has to be held to the same standard as the citizens. Asks how this can be used for property maintenance issues.

Staff stated the first step will be to have more ordinances in place and then the means to enforce the ordinances. Staff stated they concentrate on the top five issues and plan to do a second sweep throughout the City.

- 3-E Hear and discuss the findings and recommendations of the traffic analysis study and alignment study for Chaha Road from Rowlett Road to Kirby. (15 minutes)

Staff discussed the recommendations of the traffic analysis and alignment study.

Council asked if all the crashes have been speed related.

Staff stated all accidents were speed related, although some did occur in increment weather.

Council asked if a barrier was needed in addition to the flattening of the curve.

Staff stated with the speed limit and the flattening of the curve, that no barriers would be necessary.

Council asked if there were other locations in the City with similar issues.

Staff replied in the affirmative.

Council asked if this was a project that could be supplemented by the Regional Transportation Council (RTC) or by the Federal government.

Staff stated it was possible since the road does function as a collector line.

- 3-F Discuss the design of a 24-inch waterline along Princeton Road from Liberty Grove Road to Dalrock Road as part of the Princeton Road Rehabilitation project. (10 minutes)

Staff gave a brief overview of this project.

The consensus of the Council is to be prudent about combining the projects.

Council stated the project should be combined to take advantage of the two projects. Council voiced concern with the competing needs of the City; asked if this was the best use of those limited resources.

- 3-G Discuss the hiring of a Drainage Engineer. (10 minutes)

Staff recommended the funding of this position be funded the same as the current Public Works and Engineering staff; splitting the cost between the General Fund and the Drainage Fund.

Council asked staff where the money would come from out of the General Fund.

Staff replied from the funds designated for major projects like CIP since it's an engineering issue.

Council stated during the budget meetings a consensus was made to not add additional positions that were not revenue neutral. A member of the Council stated a Drainage Engineer should not be hired.

Council asked what amount of money would be taken from the CIP that's in the General Fund.

Staff stated approximately \$42,000.

A member of Council voiced concerns with funding employees through fees.

A member of Council stated the Drainage Fund is not a franchise; it is a fee that was put into place to fund a drainage master plan which has since morphed.

A member of Council suggested the cost be split three (3) ways from the General Fund, Drainage Fund, and the Water and Sewer Fund.

3-H Discuss Board and Commission Handbook. (5 minutes)

Staff asked for a consensus as to whether Council would like Option 1 or Option 2.

Council chose Option 2.

4. DISCUSS REGULAR SESSION ITEMS

Items 10F and 10G were removed from the Consent Agenda to be considered individually.

CONVENE INTO THE COUNCIL CHAMBERS (7:30 P.M.)

Convened into regular session at 7:36 p.m.

5. INVOCATION

The invocation was led by Pastor Craig Schill, Lake Cities Community Church.

6. PLEDGE OF ALLEGIANCE

Mayor Harper led the Pledge of Allegiance.

7. TEXAS PLEDGE OF ALLEGIANCE

Mayor Harper led the Texas Pledge of Allegiance.

8. PRESENTATIONS AND PROCLAMATIONS

- 8-A Update from the Mayor: Financial Position, Major Projects, Operational Issues, Upcoming Dates of Interest.

Mayor Harper updated the Council regarding the City's position in the country's financial situation; hiring a firm to audit the City's sales taxes; new water billing rates from pass-through charges from the City's suppliers; the City is pursuing grant monies for different projects; all segments of the President George Bush Turnpike Extension are now under contract; the Coyle House will be moved to Pecan Grove Park in January; the design/build contract for the DART Blue Line Extension project will be award on January 27, 2009 by DART; and the purchase of the northern portion of the Elgin B. Robertson Park is contingent on a developer buying the property immediately from the City and providing the funding for the purchase and the development of the property. Spoke concerning major thoroughfare construction; a new type of contact will be used on projects to include performance incentives; contract negotiations are underway for the new City Manager; smoking ban public hearing on January 6, 2009; Rowlett Police Association is collecting toys for the Rowlett Needy Children Fund; the Fire Rescue Promotional Ceremony will be on December 3, 2008; will speak on December 6, 2008 at the Men and Women of Honor Awards Banquet; the Boards and Commission Volunteer Banquet is scheduled for January 16, 2009; present the State of the City address on January 20, 2009; and the next Town Hall Meeting is scheduled for February 5, 2009.

9. CITIZENS' INPUT

1. Stanley Pollard – 3110 Sycamore Street, Rowlett - spoke concerning the Unified Development Code.
2. Susan Turek – 7301 Alissa Drive, Rowlett - spoke concerning the seniors of Rowlett.

10. CONSENT AGENDA

Mayor Harper explained the procedure regarding the Consent Agenda and the rights of each Councilmember and each citizen to have any consent agenda item removed to be considered individually.

Items 10F and 10G were removed from the Consent Agenda to be considered individually. A citizen, Larry Beckham, requested that Item 10G be removed and considered individually.

City Secretary read items into the record.

- 10-A Consider approving minutes from the November 13, Special Council Meeting and November 18, 2008 Regular Council Meeting.

This Matter was approved on the Consent Agenda.

- 10-B Consider a resolution approving the Boards and Commission Handbook.

This Matter was approved as RES-151-08 on the Consent Agenda.

10-C Consider an ordinance adopting amendments to the Home Rule Charter approved by voters of the City of Rowlett at the November 4, 2008 election.

This Matter was approved as ORD-053-08 on the Consent Agenda.

10-D Consider a resolution approving policy to require an annual performance review for all City Officers.

This Matter was approved as RES-152-08 on the Consent Agenda.

10-E Consider a resolution to adopt a policy for charter amendment elections to coincide with state and national election cycles and to appoint a charter review commission every four (4) years.

This Matter was approved as RES-153-08 on the Consent Agenda.

10-F Consider a resolution approving a purchase and sale agreement for the acquisition of 0.670 acres of property located at 4020 Lakeview Parkway for the reconstruction of Martin Drive from Lakeview Parkway to Industrial Street in the amount of seven hundred thousand dollars (\$700,000) and authorizing the Mayor to execute such agreement.

Mayor Harper read the item into the record.

Mayor Pro Tem Gottel stated "I would like to make a motion to modify Item 10F to \$705,000."

Mayor Harper stated "A motion is made to amend Item 10F so that the figure is not to exceed \$705,000. Is there a second to that motion?"

A motion was made by Mayor Pro Tem Gottel, seconded by Councilmember Jackson, that this matter be adopted as amended to not exceed \$705,000 as RES-156-08. The motion carried by the following vote:

Ayes: 6 - Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

Excused: 1 - Councilmember Phillips

10-G

Consider a resolution authorizing the final acceptance of the improvements for the Phase II Waterview Drainage Improvements project and approving the final payment and release of retainage in the amount of seventy-one thousand seven dollars and seventy-two cents (\$71,007.72) to American Golf Corporation for the portion of the work performed by Johnson Golf Course Construction, Inc, subject to approval by the City Attorney.

Mayor Harper read the item into the record.

Mayor Harper stated "We had a citizen ask us if we would consider this individually rather than on consent. Larry, would you like to come forward and ask your question or give us your concern. And for the records, we'll need your name and address please."

Larry Beckham, 9313 Willard Street, Rowlett, stated "My main question is what's it for?"

Mayor Harper replied "An explanation of it?"

Mr. Beckham continued "It doesn't really explain it right here."

Mayor Harper stated "Mr. Harris, would you be willing to explain that, please sir."

George Harris, Interim City Manager replied "I'd be glad to, Mayor. Back about a year ago, the City entered into an agreement with American Golf to improve drainage work at the golf course and also the adjoining residences there. This is part of that work that improved the drainage and stopped the flooding around the backs of some of the houses that are adjacent to the golf course. And this is one of the subcontractors that performed that work. The work project, the drainage and the other improvements that were made in accordance with that drainage are now complete. This is one of the final payments."

Mr. Beckham stated "It's just not the golf course then, it's Waterview as well?"

Mr. Harris replied "It is in Waterview as well. Yes, some of the drainage problems on the golf course were incorporated into the Master Drainage Plan to improve the drainage problems that were off the course, as well as, on the course because they were tied in with each other."

Mr. Beckham replied "Okay, thank you, Mayor."

Mayor Harper stated "Mr. Beckham, we raised the same questions in Work Session. Those were good questions. Thank you very much. All right, any other questions or comments on Item 10G? If not, do we have a motion?"

A motion was made by Mayor Pro Tem Gottel, seconded by Councilmember Rushing, that this matter be adopted as RES-157-08. The motion carried by the following vote:

Ayes: 6 - Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

Excused: 1 - Councilmember Phillips

- 10-H Consider a resolution approving Change Order Number 7 in the amount of twenty-one thousand two hundred sixty-two dollars and eighteen cents (\$21,262.18) to the contract with McMahon Contracting, LP for the Kenwood Heights, Phase 1 subdivision reconstruction project.
- This Matter was approved as RES-154-08 on the Consent Agenda.**
- 10-I Consider a resolution directing City staff to proceed with the design of Chaha Road from east of Rowlett Road to south of Kirby Road.
- This Matter was approved as RES-155-07 on the Consent Agenda.**

Passed The Consent Agenda

A motion was made by Councilmember Rushing, seconded by Councilmember Jackson, including all the preceding items marked as having been adopted on the Consent Agenda. The motion carried by the following vote:

Ayes: 6 - Mayor Harper, Mayor Pro Tem Gottel, Deputy Mayor Pro Tem Maggiotto, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

Excused: 1 - Councilmember Phillips

11. ITEMS FOR INDIVIDUAL CONSIDERATION

- 11-A Conduct the first of two public hearings to consider an administrative amendment to Article VI, Section 6.04(1)(A) of the City Charter to delete the word "every" from the last, final sentence.

Mayor Harper read the item into the record.

Mayor Harper stated "We recently had a City Charter Review Commission headed by Mr. Jeffrey Sheldon and they made several recommendations for improving and updating our City Charter. Some of those required election, approval by the voters, and those were on the ballot November 4th. There were about four (4) perhaps five (5), I can't recall exactly, that required administrative changes and you saw some of that occurring in the consent agenda that we passed this evening. However, this is one that is to correct a typographical error in the City Charter and we have to have a public hearing in order to make that legal. So I am now going to formally open the public hearing (8:20 p.m.) and what that means is it gives you in the audience an opportunity to speak for or against the proposed amendment to change the word 'every' in the City Charter. So, having opened the public hearing, is there anyone who wishes to come forward and speak either for or against? Not seeing anyone, we'll close the public hearing (8:20 p.m.); we'll have a similar public hearing at a future City Council meeting."

- 11-B Consider an ordinance approving a 24-year electric power contract with Cities Aggregation Power Project, Inc. (CAPP), providing capacity payments as public property finance contractual obligations of the City, and pledging and levying an ad valorem tax for the payment of these capacity payments.

Mayor Harper read the item into the record.

Ann Honza, Assistant Director of Finance and Administration, stated there are a number of details involving this particular transaction that I want to summarize for the public to be able to understand why this contract is under consideration. As the title of this agenda item states, this is a twenty-four (24) year electric power contract. The proposed contract is between the City and Cities Aggregation Power Project or CAPP, which is a group that the City has been a member of since 2000. The City has achieved great savings as a member of this group and collaboratively with over one hundred (100) cities. CAPP has gone beyond aggregated purchases with this contract by trying to obtain budget stability for electric power purchases.

The Council approved CAPP's initiative in November 2005 to negotiate for a long-term contract directly with a producer of power, such as coal plants operators. This contract does include the purchase of power from coal plants which sometimes is controversial; however, the coal plants considered in this contract are three plants that are essential to the ERCOT grid. The ERCOT grid is the "control" for all electric power for the State. These plants are critical to providing electricity in the State to all users. Something to be understood by anyone who might be opposed to the use of coal power is that you get your power off of the grid regardless of its source. You are purchasing power directly from a coal producer with this contract. The contract is a guarantee that your power will be there when you need it, but as a user, you never know the source of each kilowatt. The company that owns these power plants is Luminant, LLC. and several other related companies that make up this group. Luminant purchased the assets for coal production from some previous owners in the State who have a need for capital infusion. Luminant inherited poorly maintained infrastructure that needs repair and they need borrowing for that purpose. Luminant has a poor credit rating and cities historically have good credit ratings and are conservative in investments. The laws that govern investments and borrowings by cities make it an attractive proposition for Luminant to partner with cities to obtain the use of municipal borrowing power. This explains how this agreement was born. This is the only contract of this nature available at the current time. There are no other groups that are willing to negotiate with cities to provide them reduced priced power over such a long-term period.

The City was fortunate in October 2008 to be able to enter into a five (5) year contract, as a part of CAPP, where we were allowed to lock into a price that is very favorable. The price negotiated in the five (5) year contract is approximately one-half (1/2) of the price paid during the last quarter of calendar year 2008. This current contract is for one hundred percent (100%) of the City's electric power needs beginning on January 1, 2009.

The twenty-four (24) year contract has been in discussion for several months in its current form, and the complexion of this contract has changed over time as the five (5) year contract was negotiated, and the condition of the economy has changed. Everyone is aware as they look at the news that the economy has definitely been in a downward spiral for the last couple of months. There has been a decline in demand for natural gas which has resulted in a dramatic drop in the price of natural gas. Since deregulation in Texas in the early 2000's, the price of electricity has been based on the price of natural gas. Natural gas is a highly volatile market, and consumers, including the City, are always somewhat at the mercy of that market. Longer term electric contracts provide a weakening of that dependence on the natural gas market. This contract's primary selling point is that it will provide some stability in City budgets over a long period of time. It will keep cities from being forced to make decisions based on what the natural gas market is doing, and provides stability that has not been available before. Again, consumers have been at the mercy of the deregulated market since 2000. If you look at the graphs of natural gas prices, there have been lots of up and downs. The natural gas market is currently at a low. Long-term trends estimated by the Federal government have not been adjusted for this recent decline in prices. There is generally a lag of six (6) months between the market data and the development of a long-term trend. The Federal government still proposes there will be a continued long-term upward trend in the price of natural gas.

Because this is a complex transaction, let me describe the agreement, the parties involved, and the issues that are outstanding at this time. CAPP has entered into an agreement with Luminant. Cities do not enter into an agreement with Luminant directly. CAPP, as a separate entity, will issue debt. The cities in turn pledge a portion of their property taxes to repay that debt over the twenty-four (24) year period of the contract in the form of a Capacity Payment. The Capacity Payment is estimated over the twenty-four (24) year period to be slightly more than \$3M for the City and roughly \$22,000 in any given year. These amounts represent a maximum. If the amount of the Capacity Payment goes above these amounts, this deal does not go forward.

Some of the issues that exist are:

- The agreement has not been approved by the Attorney General's office. The agreement was well towards approval when there was a change in the upper levels at the Attorney General's office, and the process started over. Now to expedite the process, CAPP has filed a bond validation suit. If the bond validation suit is won, the bonds can be sold without specific approval by the Attorney General's office. To clarify, it is the nature of this agreement, where bonds are to be sold in order to meet the goal of saving money for cities for a commodity, that has never been done before that is causing the Attorney General's office to pause over approval.
- There are over one hundred (100) cities who are members of CAPP. Forty-one (41), as of today, have approved the long-term agreement. Wichita Falls approved the long-term contract this morning. The original agreement included in the agenda packet considered the purchase of one hundred fifty (150) megawatts of power. The contract now considers the purchase of fifty (50) megawatts of power. Some large cities decided the transaction was too risky during the current economy and the favorable terms of the five (5) year contract. The five (5) year contract was negotiated at such favorable rates that it achieves lower prices than the twenty-four (24) year contract for those first years. The cities who declined the contract determined that the cost during the next five years was too great, and they did not want to take the risk of changing natural gas prices. For Rowlett, the dollar cost is minor compared to some of those cities. Rowlett already has achieved approximately \$537,000 in savings with the five (5) year contract over what was originally budgeted in FY 2009. The twenty-four (24) year contract would reduce those savings to slightly in excess of \$500,000 in FY 2009.

Because there is no risk free transaction, we need to go through the risks associated with the contract:

- Luminant went through a leverage buyout (LBO). The LBO required the generation assets be refinanced after seven (7) years. There was no definition of exactly how those assets would be refinanced, so we have to look at this deal realistically. Luminant may sell the assets and the buyout clause will be initiated. If this occurs, CAPP has a first lien on all pledged assets of the entities, including not only the coal plants, but the nuclear power plant and other corporate assets of the company.
- There are no representations or assurances about the financial strength or viability of Luminant.
- A termination clause exists where either party can terminate the deal. For Luminant, the contract is in default if they fail to provide energy at any time when it is available. So, if there is an act of God, for example, which does not take all their coal plants off line, then they are required to provide us energy. In the case of default, Luminant must pay CAPP liquidated damages equal to the cost of any replacement energy that CAPP would go out and buy, and Luminant would be required to replace the energy withheld less the price as provided in the agreement with CAPP. In the event of a default, liquidated damages are set to make the CAPP cities whole and provides for a termination payment to make up for member cities having to replace energy not delivered by Luminant with higher priced energy.

The damages represent the refund of the unamortized principle of the bonds excluding the bond issue cost. Basically, Luminant has to repay CAPP what they receive from CAPP. There is some slight risk from the bond issue costs, but those generally are very small in relation to the agreement, plus they have to pay the greater of the "make whole premium" or CAPP's economic damages, capped at \$120M at execution and declining one twenty-fourth (1/24) each year of the agreement. Since the agreement originally considered one hundred fifty (150) megawatts, and the current estimate is fifty (50) megawatts, the "make whole premium" now would be more likely \$40M in the final document.

On the other hand, if CAPP fails to take and pay for electric energy, CAPP is required to pay the seller "resale damages" equal to the positive difference, if any, between the energy price as provided in the agreement less the sales price realized by Luminant selling the excess power. So, there is a way that both parties are made whole in the event that there is a default of the agreement. CAPP will have paid three-fifths (3/5) of the electric costs as the Capacity Payment up front, so CAPP attorneys and board believe it is a remote possibility that resale damages will ever occur. This payment at time of execution of the contract is why a bond sale and pledging of tax base is a part of the deal. With the proceeds of the bond sale, Luminant obtains capital infusion to bring some of their older plants up to current energy standards.

- CAPP also makes no representation regarding the current or future value of the collateral pledged by Luminant.
- Finally, CAPP, and therefore, the participating members are responsible for their proportionate share of any new governmental charges that may be imposed upon the coal plants included in the agreement. The proportionate share for all of CAPP is estimated at three percent (3%), and Rowlett's share is one-half percent (.50%) of the three percent. The total CAPP liability for these assessments is capped at charges in excess of operating expenses of \$100,000 annually or capital expenses that are greater than \$1M over the term of the twenty-four (24) year agreement. So, it is not anticipated that CAPP and the City individually would have a large expenditure, however, it is important to realize that new legislative requirements imposed on coal plants would potentially create a liability for participants in the agreement.

There is a choice between whether to view the amazingly low natural gas prices right now as a long term situation or whether to view the prices as a blip in our historical natural gas pricing trends. The economy right now is very unusual and the real selling point, again of this deal, is whether or not to have stability in electricity budgets. There are some minor increases built into the contract that at no time go over one percent (1%) per year. So, this agreement is a way to bring stability to a substantial portion of the City's budget. The budget for FY 2009 is just short of \$2M for electricity, so this could be a significant savings over the long-term. But as I said, there is some risk to approving the contract. In addition to the risks that are outlined in the disclosure documents, we do have to realize that there is a risk the deal won't make. If Rowlett agrees to approve this agreement with CAPP, it is merely preserving the City's right to be a part of the group. However, if CAPP cannot get enough cities to approve the contract to make up the fifty (50) megawatts of power, the deal will not be done because it is not economically feasible without at least fifty (50) megawatts. It is staff's recommendation that the City preserve its rights to participate in the contract.

Mayor Harper stated "So, if I understand what you have said in very simple terms, there is a modest downside risk, an enormous upside opportunity, and for that we're going to put our credit on the line and there are many protections built-in just in case. Forty-one (41) other cities have signed on out of the one hundred (100) CAPP cities. We would be the forty-second city to approve. In order for the fifty (50) megawatts of power to be achieved for the deal to go through more cities than just Rowlett would have to approve the deal."

Ms. Honza replied "Exactly."

Mayor Harper continued "So, our vote this evening will be to enter into a twenty-four (24) year agreement for the provision of electrical services."

Ms. Honza replied "Right. And to remind everyone, the agreement that you approved on October 21st, was a five (5) year contract that right now does cover one hundred percent (100%) of the requirements for the City. However, it was originally designed as a wrap contract to supplement the twenty-four (24) year contract which provides sixty percent (60%) of electric needs or the base load. Base load is defined as the minimum amount that we run twenty-four/seven (24/7) all the time. The contract that we have now for the next five (5) years has a one (1) time buyout for sixty percent (60%) of the City's electric load to be provided with the long-term contract while allowing the City to continue to purchase forty percent (40%) of its load at the five (5) year rates. The per kilowatt hour rate is slightly higher for the long-term contract during those first five (5) years, but your potential for savings over the long haul for the long term contract should outweigh any additional costs. It's a very small amount considering the overall cost of the contract."

Mayor Harper stated "And the five (5) year contract is in place and it's going to stay in place if the fifty (50) megawatts are not reached."

Ms. Honza answered in the affirmative.

Mayor Harper stated "Council, questions or comments? Mr. Kilgore."

Councilmember Kilgore stated "I want to walk through this just a little bit and make sure. I read most of it but not all of it but I missed a lot when I read it. It's a heck of a lot of stuff. This is essentially a relatively complex vehicle to allow Luminant to borrow money for capital costs. And if we sign on to this agreement we essentially pledge and guarantee never to ever see again under any circumstances up to about \$3.25M. Is that correct?"

Ms. Honza replied "It is to a point."

Councilmember Kilgore stated "And going through Attachment 6, which is a Risks and Considerations Disclosure, which we are required to acknowledge before we enter into the contract. If some of the events in this memorandum occur, it's entirely possible we pay the \$3.25M or up to \$3.25M and never received a single kilowatt of electricity. That's possible under this, is that correct?"

Ms. Honza replied "It is the worst case scenario, yes."

Councilmember Kilgore continued "So we are going to gamble with our \$3.25M so we begin to balance it. The memorandum also discloses that the people holding approximately \$20 billion of the existing debt are rated as 'junk' ratings or below investment ratings. Is that correct?"

Ms. Honza answered in the affirmative.

Councilmember Kilgore continued "Some of the things that could cause them to not have to perform, for example under the Force Majeure part of the policy, is that one of these plants blows up or something and they're not capable of delivering us the electricity, we still lose \$3.25M and they don't have to deliver the electricity."

Ms. Honza replied "Well, the fact that one (1) plant blows up would not affect it; however, were they unable to deliver electricity from the units from three (3) different plants then that would be the case."

Councilmember Kilgore stated "Or...okay. It just kind of depends on how much capacity they've got at a given moment. But that's one of the possibilities."

Ms. Honza stated "But yours is guaranteed at least up front."

Councilmember Kilgore stated "If two (2) of the plants go off line or something like that or there's a tornado or whatever, but still something could happen to the plants. We still lose the money and we don't get the electricity."

Ms. Honza replied "That's right."

Councilmember Kilgore stated "I want to ask you about in particular the reading of the new governmental charges. I read that a little bit differently and that's the provision where if the government imposes any what are called governmental charges, but that also includes any capital improvements they're required to make because of new regulations. Is that correct?"

Ms. Honza answered in the affirmative.

Councilmember Kilgore continued "Talking about some limitation of it, as I read this here that we would or CAPP would be responsible for a proportionate share of the costs of any such charges in excess of the operating expenses of \$100,000 annually or capital expenses greater than \$1M. In other words, they would pay the first \$100,000 or \$1M and then CAPP would be responsible paid through the electric charges for everything over that. Is that..."

Ms. Honza replied "No, I guess I need to read that part again because I understood that it was capped at that. Do you know which page that is?"

Councilmember Kilgore replied "Sure, page 6 on Attachment 6."

Ms. Honza replied "Okay, let me look at it real quick."

Councilmember Kilgore stated "And it would be midway down the very bottom paragraph."

Mayor Harper stated "We have the CAPP attorney present. Do you want to assist with some of this? I shouldn't say it that way; he's with our firm but he's a specialist in CAPP. So come forward and help us with that. Ann is an accountant and I have great sympathy for her and I'll let you two attorneys battle it out."

Kevin Laughlin, Nicholas Jackson Dillard Hager & Smith, stated "I'm a constituted expert as far as this goes other than having Geoffrey Gay doing this presentation is the fact that I went to most of the meetings, so that's how this works. But I have read the agreements. Let me read this first because you're looking at the Disclosure Statement. I believe...actually, I think your reading is probably correct. (Councilmember Kilgore is correct), your reading is actually correct; it's actually the excess above. In other words, Luminant and their subsidiaries are willing to eat a portion of those new charges but anything in excess of that would go into an increase rate component."

Councilmember Kilgore replied "Okay, and on the new governmental charges, let's play that out a little bit. One of my concerns, for example, if President-Elect Obama follows through on his prior policy statements on energy, things are about to get rough for the coal fired energy generation business. And we can anticipate before we roll out of the five (5) year agreement into the twenty-four (24) year agreement and we go through down the road on that that they may be actually, it's possible, we don't know for sure obviously, but they may be subject to some very stiff and expensive modifications in order to meet the new paradigm in energy development. So that's a possibility. Is that right?"

Ms. Honza replied "It is a possibility; however, you do have to realize that these coal plants are in place. They've been producing for quite some time. They are a critical part of the ERCOT grid. This region of Texas would not receive electricity without those plants being online and in grid. It would take a while for them to replace the energy."

Councilmember Kilgore stated "They won't go away; we just might incur a few million dollars extra above our \$3M to pay for the cleaning it up."

Ms. Honza stated "Well, we are only responsible for our share of CAPP's share...CAPP in total is only responsible for three percent (3%) of whatever is impacted."

Councilmember Kilgore replied "Well that three percent (3%) of the capacity."

Ms. Honza continued "And then we in turn have a very small percentage of that three percent (3%)."

Mr. Laughlin stated "Councilman Kilgore, I think one thing to mention as far as that goes. Keep in mind these...whatever those charges end up being whether you're in this contract or not in this contract, you're going to be purchasing, obviously, power regardless. You can pretty well count on Luminant and their subsidiaries going to the Public Utility Commission (PUC) requesting rate increases to offset these charges. Eventually, you pass it down anyway."

Councilmember Kilgore stated "We are going to pay for it either way."

Mr. Laughlin replied "You're going to pay for it one way or another."

Councilmember Kilgore stated "I guess the point being is that there may be other things above and beyond. Another provision of this contract is if somewhere down the road several of the cities, some number and we don't know what that number is, decide if for whatever reason they can't or won't participate any further in this it could become an event of default. In which case, we again, lose our or up to \$3.25M and we also pay our proportionate share of \$120M, I believe in liquidated damages and we receive no more electricity under the contract. Is that also a possibility under this contract?"

Ms. Honza replied "Now the liquidated damages are, let me make sure I'm saying this right, liquidated damages are paid by...they are actually paid to CAPP. There are no liquidated damages paid by CAPP. There are release damages that would be paid but they're under a different category. But there is a make whole arrangement for either one."

Mr. Laughlin stated "Eventually, what ends up happening is should a preventive default occur and the contract ultimately be terminated there's ultimately kind of a breakeven. What happens eventually is, as I understand it, is there still will be kind of a payback provision. There may still be some liquidated damages but what happens is that Luminant is no longer obligated to provide the power at the price under the contract and therefore under the release of those obligations, you still end up having to be, you know, terminated with the money as being reconciled."

Councilmember Kilgore replied "Okay."

Mayor Harper stated "Ann, when did you provide all of this to us? Was it Wednesday? Did this come in our packet?"

Ms. Honza replied "It did come in your packet."

Mayor Harper stated "So we've had it since Wednesday. Okay. I'd urge that we have these kinds of debates and dialogues before the council meeting if we can. You're above and beyond me. You're two attorneys going back and forth and I'm counting on you who we have hired to advise us."

Deputy Mayor Pro Tem Maggiotto stated "One follow up question to 'making whole'. The last major corporation that I know of Exxon...I guess in other words that there have been enough failures of corporations that no one's made whole. So who or what would make us whole in the event of default?"

Mr. Laughlin replied "It depends on the nature of the default and how when you're talking about a cataclysmic default, I mean, in what respect?"

Deputy Mayor Pro Tem Maggiotto stated "A reasonable default would be Luminant can no longer abide by the contract terms in providing power."

Mr. Laughlin replied "Well basically what you're talking about is actually if they can no longer provide the power..."

Deputy Mayor Pro Tem Maggiotto stated "Say they go bankrupt for ease of terminology. They go bankrupt; who or what is going to make up whole? I haven't seen anything...I haven't seen anyone made whole from catastrophic corporate bankruptcy."

Mr. Laughlin replied "That's probably one of the more difficult risks to totally assess in this whole deal. Part of the situation with the potential bankruptcy would be because, and this is how it's been explained through the attorneys that CAPP has hired, basically the power plants that you have particularly units that are in play here are still throwing out significant enough power that the PUC and or some other type of entity would likely come in and step in and take over, whether it be receivership or whatever and continue to provide the power. It's too much of a loss of potential volume of electric power in the total ERCOT grid to let those plants go totally idle with nothing ever happening. The other issue is and has mentioned this is that CAPP does become a secured creditor along with their...at least during this first period during the current LBO financing, as secure creditors are with on the same level as their financing folks and also have a secured interest in the Luminant assets. And so whether or not you could effectively try to foreclose on those assets, chances are somebody is going to and bring somebody in to actually run those plants and keep that power generating. Because otherwise to leave those...I mean from just a very practical standpoint, to leave those plants sitting idle, not generating revenue with the available electric capacity they kick out, if it's not Luminant somebody's going to be operating those plants and taking over this contract if it continues on."

Mayor Harper stated "Okay, now from my perspective as Mayor, we've got a City staff and this kind of dialogue they should be having. I'm not an attorney, don't wish to be an attorney, never have wanted to be, and won't be and this is the kind of dialogue I want to see offline with City staff instead of taking City Council time. This is far beyond policy making. We're getting into what does this word mean. Let's move on. Are you advising us that there is great risk? No risk? Moderate risk?"

Mr. Laughlin replied "I will tell you there is a risk. And I think every effort..."

Mayor Harper stated "Great risk? No risk? Moderate risk?"

Mr. Laughlin replied "There is moderate risk given the current economy that I believe that CAPP and their very...and I've known these particular attorneys that they've hired and used, I've known them for a good number of years personally and worked with them as my outside

counsel in other cities I've worked for. They're very knowledgeable and I think they've made every effort to put in stop gaps and other ways to offset those risks."

Mayor Harper stated "I thought I asked a simple question. I don't want any hedging. We are seven (7) people and only one (1) of us is trained in law. We're going to make a decision in a few minutes and we're going to rely upon your advice and we're asking you, is there moderate risk? No risk? Or great risk?"

Mr. Laughlin replied "I believe there's moderate risk and I believe the contract addresses to the extent it possibly can to offset any of those risks."

Mayor Harper stated "And Ann, do you and Brian and George recommend this?"

Ms. Honza replied "I do."

Brian Funderburk, Director of Financial Services replied "Mayor, I do too."

Mr. Harris replied "Mayor, it's over my head."

Mayor Harper stated "We have found the honest man in the crowd. Thank you, George. Not to cut off debate but I'd like to bring it down to a level where it is policy. That's our job here is policy. Mr. Gottel."

Mayor Pro Tem Gottel stated "Just a very simple question, a very plain and simple question. If we do not approve the agreement, we still have the five (5) year agreement in place, correct?"

Ms. Honza replied "Yes, we do."

Mayor Pro Tem Gottel asked "What happens after the five (5) years?"

Ms. Honza replied "Then we're at the mercy of the market. Whatever condition it is in those five (5) years."

Mayor Pro Tem Gottel stated "But would we be going back to CAPP and saying 'we'd like to renegotiate our five (5) year contract.'"

Ms. Honza replied "I do believe that CAPP, because they have a number of cities who have not approved, they have some who have and some who haven't, that they will come back with another cooperative purchasing agreement after the end of the five (5) years. That is my belief; I don't have anything to prove that's the case but I do believe they will come back with one because their membership is divided on this issue."

Mayor Harper stated "Anybody else? Yes, sir."

Councilmember Kilgore stated "Okay, I kind of want to get to the bottom line of where I'm going with this since I never was allowed to get there. The point being, I just wanted to get on the record a translation of what's in that document. There are risks and you've characterized as a moderate risk. Personally, I think and we know that, for example Carrollton, Flower Mound, Haskell, Heath, Irving, Kennedale, Mansfield, Prosper, Watagua, Wylie, Plano, Corpus Christi, Killeen, and a whole host of cities have rejected it so far. Plano city staff wouldn't even present it to Council. So there is a debate on this. The question for me, again, what I'm wrestling with on this is if this was my company and my business and my money, the important criteria, I think it's probably worth the risk. There is also the possibility that we will be required to pay as taxpayers for transmission lines for

T. Bone Pickens to ship his wind-power gear which will keep gas prices and coal prices and all other prices down. And that we won't even need this contract but we don't know that will happen either. The question though is that this isn't my money so do I take \$3.25M of the money from taxpayer dollars up front where we'd be obligated for forever of the money belonging to the citizens of Rowlett and roll the dice and hope that none of these things happen. Is a risk worth taking on behalf of the citizens? That's the question. I don't have an easy answer for that. To me...I just want to make it perfectly clear on the record that there's risk here and that we know that. As a matter of that's what Amendment 6 says and you will acknowledge what we have here and you will understand."

Mayor Harper stated "And you've advised us that that risk is moderate."

Mr. Laughlin replied "Yes."

Mayor Harper stated "Okay and you've advised us from the perspective of a financial analysis that this is something you recommend."

Ms. Honza replied "Yes."

Mayor Harper stated "Okay. Anybody else, Council? Do we have a motion?"

A motion was made by Councilmember Rushing, seconded by Councilmember Kilgore, that this matter be denied. The motion carried by the following vote:

Ayes: 5 - Mayor Harper, Mayor Pro Tem Gottel, Councilmember Rushing, Councilmember Jackson and Councilmember Kilgore

Noes: 1 - Deputy Mayor Pro Tem Maggiotto

Excused: 1 - Councilmember Phillips

TAKE ANY NECESSARY OR APPROPRIATE ACTION ON CLOSED/EXECUTIVE SESSION MATTERS

No actions were taken during the first Executive Session.

Mayor Harper stated "At this point, the only thing I want to let you know is that we did have an Executive Session and there are no actions that came out of that Executive Session. Council, is there any other business that we need to discuss at this time?"

Deputy Mayor Pro Tem Maggiotto asked "Are we going to reconvene into Executive Session?"

Mayor Harper stated "We are going to reconvene. I'll make that announcement in just a moment."

Deputy Mayor Pro Tem Maggiotto replied "Thank you."

Mayor Harper stated "I haven't adjourned yet. In fact, I won't adjourn; what we'll do is recess and if you would please, let us reconvene in the conference room. I've got some reading assignments for everyone before Mr. Holifield returns. So if we would, reconvene at 9:00 p.m. That's roughly 7 minutes from now in the conference room for a continuation of the Executive Session. Thank you all very much."

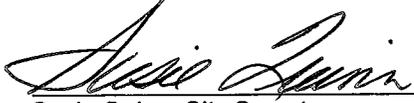
No actions were taken following the second Executive Session.

12. ADJOURNMENT

Mayor Harper adjourned the meeting at 10:48 p.m.



John E. Harper, Mayor
Date Approved: December 16, 2008



Susie Quinn, City Secretary